

THE NEW JERSEY  
ALCOHOL BEVERAGE CONTROL *BULLETINS*  
AND THE  
LGBTQ+ COMMUNITY,  
1930s-1970s.

BRIAN A. SMITH, D.C.

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BY BRIAN A. SMITH, D.C.

## PREFACE

The New Jersey Alcohol Beverage Control (ABC) began functioning in 1933 but appears to have left investigations and enforcement to the municipal authorities for the first couple of years of operation however the Activity Report for October 1939 states there were 617 complaints investigated and, of this number, 168 remained pending (*ABC Bulletin* No. 278, Item 5). The municipal authorities were responsible for issuing liquor licenses which resulted in a patchwork of laws and infractions including the closing times of bars. Being a teenager in Trenton, I knew that in Trenton, bars closed at 2 am; further out of town, in Hightstown, bars were open to 3 am, by Fort Dix they were open until 4 am, and in Atlantic City they could stay open almost around the clock- they had to close for one hour per day if I recall correctly – and it was often 7:30 or 8 am before they would close. They also had the authority to suspend those licenses for infractions of the municipality’s rules and regulations so many of those persecuted do not appear in the ABC record. In fact, the first such mention to appear in ABC records is just of this nature. The first mention of homosexuals and/or female impersonators is found in *ABC Bulletin* No. 77, dated 5 June 1935, which recounts a complaint involving the Estates Casino in Absecon. That action was not an ABC action but rather an observance by the ABC that they had no jurisdiction to interfere with an 8-day suspension of the license ordered by the City Council at some point before 31 May 1935. Only two ABC actions are noted in the 1930s, the first being the rather uncommon revocation of a license. The Log Cabin Inn in Newark, licensed by Daniel J. Roselli, lost its license on 5 November 1938 for a number of reasons: selling drinks after 3 am, selling to inebriated customers, employing unqualified individuals, and (6) *Permitting female impersonators and persons of ill repute upon the licensed premises, in violation of State Regulations 30, Rule 4*. Testimony of Investigator King stated that on 14 July while was at the bar, two men entered the premises and the bartender referred to them as “fags” and remarked they were “married” to each other. During the hearings, King described a “fag” as a pervert, having abnormal sexual relations with men and/or women, and who, by manner of speech, movement of the body and expression of the face seeks to attract attention in a manner closely resembling that commonly attributed to females. In a word, female impersonators. In the earliest testimony, it was established that a female impersonator was not defined by dress, by skill, or by any other of the characteristics regularly attributed to drag performers but rather, they were defined as such solely on the basis of the sex of the person they were trying to attract. Any man trying to attract another man was a female impersonator. Oddly, a woman trying to attract the attention of another woman was also deemed to be a female impersonator as the male impersonator made few



appearances in the official records. The second ABC action followed on 7 June 1939 when Peter Orsi's license was suspended for 30 days on 22 June 1939. Perhaps an early and troubling sign of things to come, Mr. Orsi, using an inside procedure, appealed the decision to the Director who ultimately rejected it on 8 March 1940, setting a precedent that would be consistently repeated in the Superior Courts for the following four decades. The Casino on Paterson presents an interesting history. In 1955 two of the many charges stand out: *the making of arrangements for acts of perverted sexual relations between male patrons and permitted persons who appeared to be homosexuals to congregate on your licensed premises and to mingle with and solicit male patrons for acts of perverted sexual relations*. In 1957, among the charges is one of allowing *male impersonators* on the premises. In 1960 they *permitted and suffered persons, females impersonating males, who appeared to be homosexuals to frequent and congregate in and upon your licensed premises*. Under new ownership in 1962, the lesbian patrons were discouraged from socializing on the premises. The owner stated he reduced the number of lesbians who frequented his establishment by over 90% by changing the décor and ejecting those he identified as lesbian since he could spot one by *their appearance, attire and mannerisms, ...; that none of them carried pocketbooks; that they paid for their drinks with money taken from their trouser pockets and that they walked in manly fashion, heavy-footed, with swaggering of the shoulders*. The Casino was brought up on charges before the ABC on four separate occasions resulting in license suspension lasting 621 days, of 2431 possible days of operation. In other words, The Casino lost 25% of their income over a 6 year period due to the actions of the ABC. This does not include the other expenses such as the fixed business overhead costs (rent, utilities, etc) or the legal fees, which, realistically pushes their lost income closer to, if not above, 50% each year for 6 years. The ABC records reflect eleven licenses being revoked for allowing gay men and lesbians on the premises, four of which were in Newark. The longest license suspension lasted 240 days, which was levied twice - on The Casino in Paterson (14 June 1957) and on Louise's Entertainer's Club in Atlantic City (1 May 1963). These two establishments also take the two top spots when it comes to the total number of days their licenses were suspended – 621 for The Casino and 430 for Louise's.

Those establishments found to be in violation of Rule 20, Nos. 4, 5, and/or 17 usually had their license suspended for 10 days if it was a first infraction. However, the penalty grew steeper with multiple occurrences with the aim of the ABC being to permanently shut repeat offenders by suspending the license for the remainder of time left on the current license and extend it by refusing to renew the license until some distant point, often a year away. No bar could survive being closed for a year. But many who were targeted grew tired of the discrimination and fought back. This is reflected in the ABC Bulletin entries as the court decisions were republished. The ABC was finally called to account in the 1967 landmark case of *One-Eleven Liquors, Murphy's Bar, and Val's v NJ ABC* where the New Jersey Supreme Court found that the mere presence of gay and lesbian people does not constitute a public nuisance and effectively declared certain parts of Rule 20 to be unconstitutional. With financial and legal support from the Mattachine Society, the attorneys for the bars argued the fact that since being gay was not illegal in the State, it was unconstitutional to deny gay people the right to associate with whomever they wished. The Court agreed.

Section 2 contains a collection, but not a comprehensive one, though it does represent a majority, of the cases found in the *ABC Bulletin* between 1933 and 1970. The reader is directed to the New Jersey State Library page called *New Jersey LGBT Bars 1930s-1960s in ABC Bulletins* for additional information and cases [[New Jersey LGBT Bars 1930s-1960s in ABC Bulletins - New Jersey State Library \(njstatelib.org\)](https://www.njstatelib.org)]. These people and establishments were cited for violating different sections of Rule 20, usually Nos. 4 & 5, and for that reason Rule 20, in its entirety, is the first entry on the body of this work. As time progressed, the arguments expanded to include what groups cannot be discriminated against (*Bulletin* No. 0188 Item 9) and, by extension, what groups can be legally discriminated against; how it is legal to discriminate against women (*Bulletin* No. 0198 Item 6); and the definition of a *public space* (*Bulletin* No. 0264 Item 14). These three cases immediately follow Rule 20. After this groundwork is set, more than 70 cases heard before the ABC are included. These provide a unique ‘eye’ into the mindset of law enforcement agencies and the public with gay men and lesbians being detected by their walk, talk, or apparel, some of which would be amusing to read if not for the fact that the people so described could have their lives ruined as many of these cases were reported in the newspapers. An interesting dichotomy appears in which law enforcement agents “know” a homosexual when they see one but in the testimony of members of the public it is rare to encounter such a biased and ill-informed stance. Rather, the overwhelming opinion is that a person cannot tell if someone is homosexual merely by looking, listening, and smelling them. In fact, some of the public were incensed by such statements and become quite belligerent towards the agents with the occasional threat along the lines of “*You better watch your mouth or you’ll be out of here on your ass*” being made. Some take a more nuanced approach, asking exactly where is this nebulous “*public*” who are so offended by the presence of homosexuals in a bar that the State has to persecute them? Unsurprisingly, the so-called judges, called *Hearers*, virtually always sided with the agents no matter how much evidence was introduced establishing that the owner could not know whether a person was homosexual merely by sight. The Contents section below includes several entries where *Muni* appears instead of a *Bulletin* number; these are included to provide supplemental information extracted from the ABC cases; *Muni* indicates a license suspension enacted by municipal authorities. The municipal proceedings are not included herein. Section 3 follows the ABC cases and contains three NJ Superior Court, Appellate Division proceedings that are referenced in the ABC hearings and were important steps in the fight for equality; plus the landmark NJ Supreme Court decision *One Eleven v ABC*. Section 4 contains three out-of-state court cases heavily relied upon by the NJ Supreme Court in 1967.

Section 5 contains three acts sanctioned by the State in an attempt at reparations. The first is an article written by an employee of the New Jersey State Library laying out this sordid piece of the past; the second is the Special Ruling issued by the Director of the NJ ABC on 28 June 2021 in which he, on behalf of the agency and the State, made an official apology to the LGBTQ+ community for all the damage it had wrought through its actions; and the third is the Order from the State’s Attorney General that expunges the record of the 127 businesses and people appearing in a table appended to the Order.

Compare this to Great Britain of these same decades where the 1965-1968 radio show *Round the Home* had the obviously gay main characters *Julian* and *Sandy* [Hugh Paddock (1915-2000) and Kenneth Williams (1926-1988) respectively] in which the dialogue involved the extensive, if not exclusive, use of the gay vernacular known as *Polari* which the majority of listeners had no clue what was being said, yet they tuned in week after week. *Polari* is the source of much gay lingo still in use today: *camp*, *chicken*, *butch*, *trade*, *zhoosh* (Queer Eye for the Straight Guy) and *jush* (Jasmine Masters, RuPaul's Drag Race) just to name a few. The extravagant shows of the *comic in a frock*, Danny La Rue (1927-2009), a female impersonator who drew overflow crowds to television, film, and live theater performances from 1944 to 2007 is another example. The closest thing in the U.S. was Rowan & Martin's Laugh-In. The U.S. remains provincial in concerns of personal rights and liberties when compared to Western developed nations which this country lags decades behind in freedoms.

The impetus for this piece came after watching an interview with Art Smith, founder and owner of GayBarchives.com that seeks to preserve the quickly-fading memory of gay bars. Before doing this I was not familiar with any of the bars in my hometown of Trenton that appear in these records and I had looked into that very history! The LGBTQ+ community owes a huge debt of gratitude to these establishments and their owners and patrons who were the vanguard of the fight for every right you now enjoy whether it be the right to congregate, the right to receive health care, the right to marry, or the right to life – it was the people in these pages who laid the foundations for the thriving LGBTQ+ communities across the country.

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1937 0622 Bulletin 0188 #9: Discrimination against certain groups is legal	7
1937 0730 Bulletin 0198 #6: Discrimination against <i>women</i> is legal	12
1938 0801 Bulletin 0264 #14: Definition of a <i>public space</i>	15

### SECTION 2 CASES IN (*MOSTLY\**) CHRONOLOGICAL ORDER

PAGE

Key:

*Muni* refers to a license suspended by local officials

*ABC WL*: Warning Letter sent by ABC

Violations

F: Female impersonator

H: Homosexuals

L: Lesbians

Date	No.	Item	Address	City	Bar/Owner	Violation	#days susp	
1935	0605	0077	4	Absecon	Estates Casino	F	8	18
1938	1105	0279	8	985 Freylinghausen	Newark	Log Cabin Inn	F H	Revoked 20
1939	0607	0326	1	112 Bank Street	Newark	Orsi's Pub	F	30 25
1940	0308	0390	1	112 Bank Street	Newark	Orsi's Pub	Petition	Denied 27
1941	0820	0474	1	15 Central Ave	Newark	Potter's Bar	F	10 30
1942	0127	0491	3	549 So Broadway	Gloucester	McClyment	F	30 ( <i>deferred</i> ) 32
1953	0119	0953	1	212 River Street	Hoboken	Sportsmen Bar & Grill	others+ F	Revoked 37
1955	0106	1045	6	324 Springfield Ave	Newark	Polka Club Inc	F H L	180 55
1955	0106	1045	7	76 W Jersey Street	Elizabeth	Jessie Lloyd	F H	120 58
1955	0216	1050	1	6 Bank Street	Paterson	The Casino	F H	150 61
1955	0524	1063	1	20 Cross Street	Paterson	NY Bar	F H	180 68
1955	0718	1073	4	2 Main Street	Paterson	Bader's Bar	F	180 76

Date	No.	Item	Address	City	Bar/Owner	Violation	#days susp	PAGE	
1955	1122	1088	2	169 S Westminster A	Atlantic City	Louise's Entertainers Club	F H	190	82
1956	0516	1112	1	145-7 Front Street	Secaucus	Copa Club	F	40	87
1956	1008	1133	2	29 Albany Street	New Brunswick	Rutgers Cocktail Bar	F	60	90
1957	0107	1145	1	1317 Memorial/28 Hahn	Atlantic City	New Torch Club	F	100	96
1957	0403	1159	1	Black Horse Pike	Mays Landing	Clover Leaf Inn	H	60	100
1957	0403	1159	2	810-2 Cookman Ave	Asbury Park	Paddock	H	60	104
1957	0422	1161	3	Duerer & Darmstadt	Egg Harbor City	Snug Harbor Inn	H L	Revoked	110
1957	0723	1177	8	6 Bank Street	Paterson	The Casino	L	240	116
1958	0108	1202	5	810-2 Cookman Ave	Asbury Park	Paddock	F H	115	120
1958	0923	1242	3	488 Broad Street	Newark	Pelican Bar	L	65	124
1958	1112	1247	3	24 E Front Street	Trenton	Shell's Bar & Restaurant	F H	65	128
1959	0123	1259	4	801 No N Hampshire	Atlantic City	Topsy's Hideaway	H L	Rest of term	134
1959	0123	1259	5	5-9 So N Carolina	Atlantic City	Jockey Club	H L	Rest of term	137
1959	0202	Muni		24 So Warren Street	Trenton	Paddock Inn	H	10	---
1959	0209	1263	1	151 E Front Street	Trenton	Storky's	H	Appeal denied	140
1959	0209	1263	2	151 E Front Street	Trenton	Storky's	F	110	144
1959	0316	1267	3	45 W Broadway	Paterson	Edna's Rendezvous	L	142	148
1959	0807	1289	7	52 Church Street	Paterson	Savoy aka Anthony's	F H L	60	153
1959	0818	ABC	WL	49-53 W Broadway	Paterson	Hollywood Café	L	---	----
1960	0407	1333	7	1025 Atlantic Ave	Atlantic City	1025 Bar & Grill	H L	70	156
1960	0613	1340	5	6 Bank Street	Paterson	The Casino	H L	150	159
1960	0624	Muni		169 S Westminster A	Atlantic City	Louise's Entertainers Club	H	10	----
1960	0624	Muni		5-9 So N Carolina	Atlantic City	Jockey Club	H	10	----
1960	0629	1342	1	24 So Warren Street	Trenton	Paddock Inn	H	65	163
1960	0719	1345	6	501 Pacific Ave	Atlantic City	Famous Bar	H L	30	169

Date	No.	Item	Address	City	Bar/Owner	Violation	#days susp	PAGE	
1960	1219	1366	6	1719 Pacific Ave	Atlantic City	Midtown Bar & Café	H L	60	173
1960	1227	1368	5	1013 Main Street	Asbury Park	Paddock	H	180	177
1961	0119	1374	2	135 Mulberry Street	Newark	Murphy's	H L	60	180
1961	0301	1378	3	45 W Broadway	Paterson	Edna's Rendezvous	H	150	186
1961	0420	<i>not found</i>		204 Mulberry Street	Newark	Skip's Bar	H	180	----
1961	0711	1392	1	204 Mulberry Street	Newark	Skip's Bar	H	Appeal denied	190
1961	0726	1393	2	49-53 W Broadway	Paterson	Hollywood Café	L	55	194
1961	0803	1395	3	135 Mulberry Street	Newark	Murphy's	H	Appeal denied	199
1961	0905	<i>Muni</i>		169 S Westminster A	Atlantic City	Louise's Entertainers Club	H	--	----
1941	0501	0456	3	Bloomfield Ave	Caldwell Tp	Kit-Kat Tavern	H	Revoked	205 *
1943	0604	0571	1	317 Market Street	Paterson	Sidney Lichenstein	F	Revoked	209 *
1961	0911	1406	2 3	Rt 46	Pine Brook	Marge's Keyhole	H	30	213
1961	1031	1418	1	117 So Mississippi	Atlantic City	Pappy's Bar	H L	55	221
1962	0119	1430	1	49-53 W Broadway	Paterson	Hollywood Café	L	Appeal denied	225
1962	0312	1437	3	1201-03 Baltic Ave	Atlantic City	Harlem Café <i>aka King Bar</i>	H L	150	231
1962	0411	1441	5	Hightstown-Perrineville Rd	Millstone	Tollins' Bar	F	20	235
1962	0620	1453	2	81 So Clinton Street	Trenton	Hotel Penn	H	60	239
1962	0705	1456	3	6 Bank Street	Paterson	The Casino	L	50	246
1963	0107	1488	1	5-9 So N Carolina	Atlantic City	Jockey Club	F	75	252
1963	0604	1515	1	169 S Westminster A	Atlantic City	Louise's Entertainers Club	H	240	259
1963	0715	1521	1	Tabor & Maple Rds	Troy Hills	Hoover's Tavern	H	55	262
1964	0106	1543	2	5-9 So N Carolina	Atlantic City	Jockey Club	striptease	110	272
1964	0106	1543	3	24 So Warren Street	Trenton	Paddock Inn	H	60	275
1964	0727	1580	5	97-99 Edison Place	Newark	Skippy's Hideaway	H	60	283
1964	1118	1588	3	114 S New York Ave	Atlantic City	Val's Bar	H	55	286

Date	No.	Item	Address	City	Bar/Owner	Violation	#days susp	PAGE	
1965	0729	1625	2	3905 Federal	Pensauken	Ron-Day-Voo	H	50	288
1965	0820	1630	2	7-9 No Straight	Paterson	Charmac Inc	H L	55	297
1965	0928	1637	1	7-9 No Straight	Paterson	Charmac Inc	H L	115	299
1965	0928	1637	3	24 Tichenor St reet	Newark	Jack's Star Bar	H	115 reversed	302
1966	0126	1656	5	111-113 Albany	New Brunswick	One Eleven	H	60 ( <i>deferred</i> )	309
1966	0411	1667	3	24 Tichenor St reet	Newark	Jack's Star Bar	H	80 ( <i>deferred</i> )	319
1966	0428	1671	6	95 West End	Long Branch	Martinitz Tavern	H L	65	328
1966	0428	1671	9	170 S New York Ave	Atlantic City	Fort Pitt	false info	20 ( <i>deferred</i> )	330
1966	0523	1674	7	707 Bangs	Asbury Park	Blue Note	H	55	333
1966	0606	1677	1	135 Mulberry Street	Newark	Murphy's	H	Revoked	335
1966	0727	1685	1	114 S New York Ave	Atlantic City	Val's Bar	H	120	346
1966	0727	1685	3	170 S New York Ave	Atlantic City	Fort Pitt	suspension	reinstated	357
1966	1010	1695	1	111-113 Albany	New Brunswick	One Eleven	H	Appeal denied	360
1966	1010	1695	2	111-113 Albany	New Brunswick	One Eleven	suspension	reinstated	362
1966	1129	1701	1	24 Tichenor St reet	Newark	Jack's Star Bar	H	Appeal denied	363
1966	1129	1701	2	24 Tichenor St reet	Newark	Jack's Star Bar	suspension	reinstated	365
1967	0327	1721	1	429-433 Cookman A	Asbury Park	Chez'l	H L	65	366
1967	1006	1756	8	1223-5 Arctic Ave	Atlantic City	New Orleans Bar	F	60	378
1967	1129	1763	1	New Bruns, Newark &	AC - One Eleven, Murphys, & Vals	NJ Supreme Ct	<i>reversed ABC</i>		380
1967	1129	1763	2	15-17 No Illinois Av	Atlantic City	Jet-Set	H L	145	390
1969	0605 – 0724 Charges			1643 Atlantic Ave	Atlantic City	Paddock Inn <i>Vive les Boys</i>	F		-----
1969	0718 – 0724 Charges			Albany @ Boardwalk	Atlantic City	Friendship House <i>Fantastiks</i>	F		-----
1969	0719 – 0725 Charges			170 S New York Ave	Atlantic City	Fort Pitt <i>Jewel Box Revue</i>	F		-----
1970	0506	1907	3	3 immediately preceding establishments			<i>Dismissed</i>		392
1970	0709	1916	7	203-5 S New York A	Atlantic City	Ceil's Saratoga	H	45	409
1970	0925	1933	4	69-71 Albany	New Brunswick	Gold Nugget	F	<i>Dropped</i>	416
1961	0803	1395	3	135 Mulberry Street	Newark	Murphy's	H	Appeal denied	492

*\*The two ABC hearings that are out of chronological order were discovered at a late date and contain information deemed to be too important to exclude as both of those case set precedents in defining the words used in the charges.*

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Whitney Strub & Timothy Stewart-Winter, <i>Slate</i> , 17 November 2017.		
<a href="https://slate.com/human-interest/2017/11/remembering-one-eleven-wines-liquors-a-pre-stonewall-win-against-homophobic-state-surveillance.html">https://slate.com/human-interest/2017/11/remembering-one-eleven-wines-liquors-a-pre-stonewall-win-against-homophobic-state-surveillance.html</a>		
Note: the earliest case involving Murphy's Tavern in Newark was found late and added at the end		492



## SOURCE

The citation for the ABC Bulletin is as follows:

[Name]; New Jersey. *Bulletin of the Department of Alcoholic Beverage Control* (Newark, N.J.: Department of Alcoholic Beverage Control, [date])

The [Name] is given for the times as follows:

1933-1939:	Burnett, D. Frederick
1940-1941 0801:	Garrett, E. W.
1941 0813:	Tschupp, Emerson A.
1941 0820-1946 0329:	Driscoll, Alfred E.
1946 0405-1952 0117:	Hock, Erwin B.
1952 0204:	Hock, Erwin B., & Dorton, Edward J.
1952 0214-1952 0723:	Dorton, Edward J.
1952 0806-1954 0224:	Cavicchia, Dominic A.
1954 0302-1963 0308:	Davis, William Howe
1963 0315-1964 0317:	Tschupp, Emerson A.
1964 0330-1968 0115:	Lordi, Joseph P.
1968 0118- 1970 0120:	Keegan, Joseph M.
1970 0126-1972 0217:	McDonough, Richard C.
1972 0225- :	Bower, Robert E.

Records of the NJ ABC have been transferred to the New Jersey State Library and many are available online at:

<https://dspace.njstatelib.org/xmlui/handle/10929/28>

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF  
ALCOHOLIC BEVERAGE CONTROL

RULES AND REGULATIONS

Effective July 1, 1950  
(and as amended thereafter)

WILLIAM HOWE DAVIS  
Director.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

1060 BROAD STREET, NEWARK 2, N. J.

MARKET 3-3470

## PRELIMINARY STATEMENT

Under the Alcoholic Beverage Law, R. S. 33:1-1 et seq., as modified by R. S. 52:17-51 et seq., the Director of the Division of Alcoholic Beverage Control, hereafter in these regulations designated as "Director", is authorized to make such general rules and regulations and such special rulings and findings as may be necessary for the proper control of the alcoholic beverage industry in New Jersey.

To aid in administration, the various general rules and regulations, as revised, have been compiled from time to time under a single cover. The within contains mimeographed copies of our general State Regulations presently in effect. (State Regulations Nos. 22, 29, 33, 36, 37 and 40 are not included since those numbers are presently vacant.)

Reference should also be made to the official bulletins, issued periodically by the Director, for special rulings and findings, interpretations, decisions, various forms, and other material not contained herein. These bulletins are available at an annual fee of \$3.00. In addition, a pamphlet containing the Alcoholic Beverage Law is available upon request.

WILLIAM HOWE DAVIS  
Director.

STATE REGULATIONS NO. 20

CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES

Rule 1. No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

Rule 2. No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises, in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election.

Rule 3. No licensee shall directly or indirectly solicit from house to house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation.

Rule 4. No licensee shall allow, permit or suffer in or upon the licensed premises any prostitute, female impersonator, pickpocket, windler, confidence man, or any notorious criminal, gangster, racketeer, or other person of ill repute; nor shall any licensee allow, permit or suffer the licensed premises or the licensed business to be used in furtherance or aid of, or in connection with any illegal activity or enterprise resulting in a conviction in a criminal prosecution.

Rule 5. No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance.

Rule 6. No licensee shall allow, permit or suffer in or upon the licensed premises any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale; nor shall any licensee possess, have custody of, or allow, permit or suffer any such ticket or participation right, in or upon the licensed premises. However, this Rule shall not apply to bingo or raffles, or tickets or participation rights therein, being conducted pursuant to appropriate permit under the Bingo Licensing Law (R. S. 5:8-24) or the Raffles Licensing Law (R. S. 5:8-50); but in any such instance of bingo at licensed premises, the licensee, during the period between the commencement of the first and the conclusion of the last game, shall not sell, serve or deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage in any room or outdoor area where the bingo or any part thereof is being conducted.

Rule 7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pin ball machine, in or upon the licensed premises; provided, however, that bingo and raffles may be permitted in or upon the licensed premises to the same extent as is set forth in Rule 6 hereof.

Rule 8. No licensee shall possess, allow, permit or suffer in or upon the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing.

Rule 9. No licensee, except bona fide pharmacies to the extent that they may be duly authorized by law, shall possess, allow, permit or suffer the sale or distribution of any prophylactic against venereal disease or any contraceptive or contraccotive device, either chemical or mechanical, or possess, allow, permit or suffer any mechanical device for such sale or distribution, in or upon the licensed premises or any other premises used in connection therewith.

Rule 10. No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverage adulterated with methanol, alkaloids, acetone, phenols, formaldehyde, isopropyl or tertiary butyl alcohol or other harmful substance whatsoever.

Rule 11. No licensee shall manufacture, sell, offer for sale, possess, allow, permit or suffer in or upon the licensed premises any candy containing rum, cognac, brandy, cordial or other alcoholic beverage, generally known as liquored candy.

Rule 12. No licensee shall deliver within this State to any person not holding a license under the Alcoholic Beverage Law, any alcoholic beverage intended by such person for delivery, by gift or otherwise, to customers or prospective customers in the course of his business.

Rule 13. No licensee shall receive, possess or sell any alcoholic beverage transported into this State in violation of State Regulations No. 18.

Rule 14. No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises; provided, however, that opened bottles of alcoholic beverages returned by a customer as allegedly defective may be so possessed pending return to the manufacturer or wholesaler; and further provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

Rule 15. No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control. Purchase of alcoholic beverage by one retailer from another and sale of alcoholic beverage by one retailer to another are prohibited.

Rule 16. No retail licensee shall conduct the licensed business unless (a) the current license certificate is at all times conspicuously displayed on the licensed premises in such plain view as to be easily read by all persons visiting such premises, and, unless (b) commencing July 1, 1951, a photostatic or other true copy of the application for the current license is kept on the licensed premises available for inspection.

Rule 17. No licensee shall allow, permit or suffer in or upon the licensed premises or have in his possession or distribute or cause to be distributed any matter containing any obscene, indecent, filthy, lewd, lascivious or disgusting printing, writing, picture or other such representation.



Rule 18. No licensee shall sell or possess, or allow, permit or suffer in or upon the licensed premises any malt, hops, or shavings or chips, flavoring or coloring agents, cordial or liquor extracts, essences or syrups, or any ingredient, compound or preparation of similar nature.

Rule 19. No licensee privileged to sell any alcoholic beverages at retail shall, directly or indirectly, sell or offer for sale at retail any alcoholic beverage for consumption off the licensed premises except at a specified price per bottle or specified price per case thereof, or both; "combination sales" of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited.

Rule 20. No licensee privileged to sell any alcoholic beverages at retail shall, directly or indirectly, offer or furnish any gift, prize, coupon, premium, rebate, discount or similar inducement with the retail sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein shall prevent such licensees from furnishing advertising novelties of nominal value.

Rule 21. No limited retail distribution licensee shall possess or allow, permit or suffer any chilled malt alcoholic beverage in or upon the licensed premises.

Rule 22. No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron.

Rule 23. No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit or suffer the service of any alcoholic beverage other than ordered or substitute a non-alcoholic beverage when an alcoholic beverage has been ordered.

Rule 24. No licensee shall work in any capacity in or upon the licensed premises while actually or apparently intoxicated, or allow, permit or suffer any actually or apparently intoxicated person to work in any capacity in or upon the licensed premises.

Rule 25. No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed under the Alcoholic Beverage Law, or at other premises pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control.

Rule 26. No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall allow, permit or suffer any tap on the licensed premises to be connected with any barrel or other container of a malt alcoholic beverage unless such tap bears a marker, not exceeding 3 1/2 inches by 3 1/2 inches or 12 1/4 square inches, which truly indicates the name or brand of the manufacturer of such malt alcoholic beverage, and unless such name or brand is in full view of the purchaser when the tap is located at a bar at which consumers are served.

Rule 27. No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of the Alcoholic Beverage Law, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which (a) does not bear any label describing its contents or (b) bears a label which does not truly describe its contents or (c) does not bear any indicia of tax payment as required by the laws of the United States.

Rule 28. No licensee shall place any order within this State for the purchase of any alcoholic beverage or allow, permit or suffer any of his employees to place any order for the purchase of any alcoholic beverage, with any individual soliciting in violation of State Regulations No. 14.

Rule 29. No retail licensee shall employ or have connected with him in any business capacity whatsoever, any person who is interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverages within or without this State.

Rule 30. No licensee, during the suspension of license, shall (a) allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage in or upon the licensed premises; or (b) order or receive delivery of any alcoholic beverage; or (c) advertise that the licensed premises are closed or the licensed business stopped because of repairs or alterations or for any reason other than the suspension.

Rule 31. In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings.

Rules 6 and 7 amended as above May 25, 1954; filed with the Secretary of State of New Jersey May 25, 1954.

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street Newark, N. J.

BULLETIN NUMBER 188.

JUNE 22, 1937.

1. LICENSEES - "FRONTS" - WHEN A SON RENTS LICENSED PREMISES FROM HIS FATHER AND ALSO ENGAGES HIM AS BARTENDER, CAREFUL INVESTIGATION SHOULD BE MADE TO ASCERTAIN IF THE SON IS MERELY A "FRONT" OR COVER FOR THE FATHER.

ALIENS - THE PRINCIPLES RESTATED - HEREIN OF ALIENS WHO HAVE THE SAME RIGHTS AND PRIVILEGES AS AMERICAN CITIZENS BECAUSE OF RECIPROCAL TRADE TREATIES.

SPECIAL PERMITS - ALIENS - EXTENT OF PERMISSIBLE PRIVILEGES.

Pattensburg, N. J.  
June 12, 1937

Dear Sir:

I am writing you concerning what Bulletin I can find the minimum and maximum price for the Committee to charge for issuing the Seasonal and Club Licenses? Also they want to know if it is right to issue license to a son when the father owns the building and does the most of the selling over the bar but is not naturalized. We have two such cases but I am informed one is taking out his naturalization papers.

Very truly yours,  
G. Edward Dalrymple,  
Township Clerk.

June 17, 1937

Mr. G. Edward Dalrymple,  
Union Township Clerk,  
Pattensburg, N. J.

Dear Mr. Dalrymple:

Kindly refer to yours of the 12th and our acknowledgment of the 15th.

The fees for the Seasonal and Club Licenses are set forth in Sections 13(2) and 13(5) of the Control Act respectively.

The fee for the Seasonal License must be seventy-five per cent of the fee your Township has fixed for Plenary Retail Consumption Licenses which I understand is \$250.00 per annum. Therefore, the fee for a Seasonal License must be \$187.50.

The fee for Club License must be not less than \$50.00 nor more than \$150.00.

I note your inquiry as to whether it is right to issue license to a son when the father owns the building and does most of the selling over the bar but is not naturalized. Instantly this raises a question in my mind as to whether the son is a mere "front" for the father. If he is such a mere cover or blind for the father, and if the business really belongs to the father and the license is taken out in the name of the son simply because the father himself couldn't get a license, then if you find that to be the fact the license application must be denied. For, if the license were granted and it later turned out that the son was a



9. LICENSEES - REFUSAL TO SELL OR SERVE LIQUOR - NO OBLIGATION TO SELL TO OR SERVE ANY PERSON PROVIDED THE DISCRIMINATION IS NOT ON ACCOUNT OF RACE, CREED OR COLOR - HEREIN OF THE CIVIL RIGHTS ACT WHICH HAS NO APPLICATION TO SALE OR SERVICE OF LIQUOR UNLESS THE REFUSAL TO SELL WAS BECAUSE OF THE RACE, CREED OR COLOR OF THE PATRON.

May 28, 1937.

Dear Sir:

Re: Plaza Hotel - O'Leary

My clients, the owners of the Plaza Hotel, have referred to me a matter upon which I would appreciate having the advice of your Office. The facts under consideration are as follows:

The Plaza Hotel is a four or five story Hotel Building, at Fifth & Cooper Streets, in Camden, and operates, in connection with its other business, a cocktail room or tap room.

A short time ago one of their former employees stopped in their cocktail room and became more or less intoxicated and created quite a disturbance before they were finally able to get him out. The Manager of the Hotel subsequently instructed the bartender that no liquor hereafter should be served to this particular individual in their bar room. He now threatens suit against the owners of the Hotel, by reason of their failure to serve him liquor and threatens to attempt to have the license of the Hotel revoked.

Will you kindly advise me whether or not, under the circumstances, my clients have been guilty of a violation of any regulations of your Department and if there are any regulations requiring a tap room or licensed place to serve all persons who stand ready to pay for their orders or whether a licensed place may refuse to serve anyone who has previously created a disturbance on the premises.

Respectfully yours,

ROBERT J. TAIT PAUL

June 9, 1937.

Dear Sir:

Re: Plaza Hotel - O'Leary

Under date of May 28th I wrote your Office concerning a problem confronting my client, Plaza Hotel, and I now have more information which I desire to lay before you in considering this problem.

It appears that on one or two occasions prior to May 21st, 1937, one of the patrons of the cocktail room or bar connected with the Plaza Hotel had some altercation with some others in the tap room and the bartender was required to caution Mr. O'Leary, with the others, as to the continuance of the disturbance.

Subsequently Mr. O'Leary met the Manager of the Hotel at another gathering off the premises and endeavored to continue his discussion or criticism of the conduct of some of the people about the Hotel. Their discussion finally terminated in a threat on the part of Mr. O'Leary that he was going to go down to the Hotel and raise H---. The following day the Manager of the Hotel spoke to the bartender and instructed him that he was not to serve Mr. O'Leary any intoxicating liquors and later on that day, May 21st, Mr. O'Leary came into the bar room and asked for a beer and the bartender advised him that he was instructed not to serve him any intoxicating liquors and Mr. O'Leary then left.

Mr. O'Leary now brings suit against my clients under the Civil Rights Act as set forth in Compiled Statutes, 1911-1924 Supplement, Volume 1, page 573, alleging a breach of his rights by refusal of the bartender to serve him on May 21, 1937.

In looking over your rulings on various questions touching serving over the bar to adult persons who are sober, you seem to indicate that this is a matter for the judgment of the individual licensee. (Bulletin 135-8, Bulletin 135-9, Bulletin 94-8, concluding paragraph 2.).

In your letter to Judge Clark, as set out in Bulletin 94-8, concluding paragraph 2, you indicate: "A tavern is under no obligation to serve anyone", but it would seem that the Civil Rights Act would impose upon licensees the obligation to serve, unless there are some provisions which I have overlooked. Of course, your rules for the conduct of licensees and the use of licensed places covers an intoxicated person and it is possible that paragraph 5 of those same rules would justify a licensee to take steps as, in his judgment, might seem proper to prevent a breach of paragraph 5 where there has been a threat indicating an intention to create a disturbance.

It seems to me that this matter is of sufficient importance to the general industry to lay the facts before you so that we can have the benefit of your broader experience in the interpretation of the rights of a licensee to refuse to serve beverages to a person who is presently sober, with the thought of preventing some disturbance which might occur after the particular customer had indulged his appetites to the point where he might seek to create a disturbance.

I am prompted also to lay this matter before you at the suggestion of the City Clerk of Camden, Mr. Reesman, who is interested in the duties and obligations of the licensees under the particular circumstances recited in this letter.

Very truly yours,

ROBERT J. TAIT PAUL

P.S. On May 21st when Mr. O'Leary entered the bar room he created no disturbance and he was sober so far as we knew.

R. J. T. P.

June 21, 1937.

Robert J. Tait Paul, Esq.,  
Camden, N. J.

Dear Mr. Paul:

Re: Plaza Hotel - O'Leary

I have before me yours of May 28th and June 9th.

As regards suit under the Civil Rights Act: Assuming, though doubting, that for its violation a civil action for damages will lie as well as action for the penalty provided in that Act, the complaint is wholly groundless unless it avers that plaintiff was refused service of liquor because of his race, creed or color, or previous condition of servitude, or for some cause or reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude." Shubert vs. Nixon Amusement Co. 83 N.J.L. 101 (Sup. Ct. 1912). Just how can a man by the name of O'Leary invoke such a statute!

The purpose of the act is plain. It forbids discrimination in accommodations and privileges when based on race, creed or color. That is as far as it goes. It includes, among other places of public resort, inns, taverns, hotels, restaurants, and any place where beverages of any kind are retailed for consumption on the premises. But it has no application unless there is discrimination based on race, creed or color, or previous condition of servitude. Whatever is applicable to all citizens is outside the Civil Rights Act.

I make this comment not because of your case, but in order to remove any doubt in the minds of licensees throughout the State as to the existence of their right to refuse to sell or serve liquor to anybody, provided only that the refusal is not made on account of race, creed or color. As regards the propriety of your client's action in the instant case, I neither express nor entertain any opinion.

I have already ruled that, aside from the discrimination forbidden by the Civil Rights Act, a licensee has the right to refuse to sell to any person. This is true although the patron is sober and over twenty-one years of age. Re Dorflinger, Bulletin 136, Item 12. I there said:

"The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law. They cannot sell to minors; they cannot sell to persons who are intoxicated; they must keep order on the licensed premises. It is no excuse for a violation of any of these duties that the licensee may have thought the purchaser was over twenty-one or was sober. They have been repeatedly warned that in case of doubt they are not to sell, and this is the only safe advice for them to follow if they want to keep their licenses. Since a tavern keeper is absolutely responsible for such violations, it is but fair that he be given a correspondingly wide discretion in determining whether or not to sell to any particular person. He who takes the risk must be given the right to decide."

See also re Meyers, Bulletin 155, Item 2.

Licensees are forbidden to allow or suffer upon licensed premises any disturbances, brawls or unnecessary noises, or permit it to be conducted in such manner as to become a nuisance. Hence, as I said in re Rollka, Bulletin 142, Item 4: "The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

By the same token, when a licensee has reasonable grounds to believe that service of alcoholic beverages to any particular person will eventually result in "arguments," brawls or an ugly drunk, or even disturbances reasonably offensive to other patrons, he is wholly justified in refusing to serve such a customer.

I am assuming the good faith of the licensee. He could not, of course, justify refusal on this ostensible ground if his real reason was because of race, creed or color. The Civil Rights Act is to be honored to the full extent to which it goes.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS -- SALES AFTER CLOSING HOUR - FIVE DAY PENALTY URGED.

June 19, 1937

Francis J. McDonald, Esq.,  
Town Clerk,  
Harrison, New Jersey.

Dear Mr. McDonald:

I have staff report and your certification of the proceedings before the Town Council of Harrison against James Martin, charged with sale of alcoholic beverages after your 3:00 A. M. closing hour.

I note he was found guilty and his license suspended for a period of two days.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I regret that the Council did not impose a five day penalty. Licensees are deadly conscious that they are taking chances. According to his own admission, "You got me, boys - I am guilty as Hell."

It is unfair to honest licensees to allow the cheaters to get away with it.

I urge that hereafter your Council give a five days' penalty for the first closing hour violation, twice that for the second offense; and revocation upon the third. If you will do that, your Council won't have so many disciplinary proceedings to dispose of and the business will last longer.

Very truly yours,



D. Frederick Burnett,  
Commissioner.

Inspected by: J. L. ARTS and found O. K.
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New Jersey State Library

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street Newark, N. J.

BULLETIN NUMBER 198

JULY 30, 1937

1. TRANSFERS - A LICENSE MAY NOT BE TRANSFERRED WHERE NO APPLICATION FOR TRANSFER WAS EVER APPROVED BY THE ISSUING AUTHORITY WITHIN THE TERM OF THE LICENSE, AND WHERE THE APPLICANT FAILED TO COMPLY WITH THE STATUTORY REQUISITES BEFORE THE LICENSE SOUGHT TO BE TRANSFERRED HAD EXPIRED.

LIMITATION OF LICENSES - UNDER A MUNICIPAL REGULATION PROHIBITING THE ISSUANCE OF NEW LICENSES (EXCEPTING RENEWALS) A GRANT OF A NEW LICENSE IS FORBIDDEN TO AN APPLICANT CLAIMING AS TRANSFEREE OF A PREVIOUS LICENSE, WHERE THE TRANSFER HAD NOT IN FACT BEEN APPROVED BY THE ISSUING AUTHORITY WITHIN THE TERM OF THE LICENSE AND WHERE THE APPLICANT HAD FAILED TO COMPLY WITH THE STATUTORY REQUISITES WITHIN SAID TERM - SUCH A GRANT IS THE ISSUANCE OF A NEW LICENSE AND NOT A RENEWAL.

July 2nd, 1937.

Dear Sir:

As per our telephone conversation of this morning, I am writing regarding the application of Joseph Feinstein, for a Plenary Retail Consumption license, at the premises known as the Hudson Cafe, #12 Hudson Street, Camden, New Jersey.

On Wednesday, June 30, 1937, we filed application for a transfer from the then present licensee: to wit, Harry Robinson, Sr. to the said Joseph Feinstein, for license #C50 of the City of Camden, for the year 1936. This application was advertised in Wednesday evening's paper and naturally the license itself expired with the expiration of that day, namely, at midnight. I might state that all details of the application itself were in order; that is, the payment of the transfer fee, etc.

We also on Wednesday, June 30, 1937, filed an application with the City Clerk for a new license for the same premises, in the name of Joseph Feinstein, which application was advertised on Thursday, July 1st, 1937 for the first time, and will be advertised the second time on July 8th, 1937.

As I explained by telephone, the reason for filing the application for the transfer was to transfer to Mr. Feinstein the privileges which were incidental to the license. I felt that while the license itself may expire at midnight, June 30th, these privileges would not, and the said privileges, whatever they might be, could be transferred to Mr. Feinstein after the expiration of the license.

The thing I had more particularly in mind, was to bring to the attention of the public and the governing body, the fact that this is not a new application in the name of Mr. Feinstein, but is merely a transfer of an existing license, so that he will not be barred by the limitation on the number of licenses, which the local board has set up.

As I have also explained by telephone, some members of the Board feel that my procedure has been somewhat irregular and

6. LICENSEES - SELECTIVE CHOOSING OF CUSTOMERS - MAY REFUSE TO SERVE WOMEN IF THEY WISH.

LICENSED PLACES - SANITARY ARRANGEMENTS - SEPARATE ACCOMMODATIONS SHOULD BE SUPPLIED FOR MEN AND WOMEN.

July 23, 1937.

Dear Commissioner Burnett:

The new Plumbing Code of the City of Newark provides that where male and female patrons are employed or served in food establishments (restaurants, taverns, etc.) separate toilet accommodations must be provided.

Some tavern operators have propounded the following question to our Department: If they were to discontinue serving female patrons would our Department forego the recommendation for extra toilet facilities.

Under present State and Local Regulations can tavern operators rightfully and legally refuse to serve female patrons? Your opinion on this matter and any suggestions you might care to make on this subject will be appreciated.

Respectfully yours,

Charles V. Craster, M.D., D.P.H.  
Health Officer

July 27, 1937.

Charles V. Craster, M.D.,  
Department of Health,  
Newark, N. J.

My dear Dr. Craster:

I have your letter of the 23rd.

There is nothing in the Control Act or the State regulations which prevents a tavernkeeper from refusing to serve female patrons. Licensees may sell or refuse as they choose.

Under the Act to Protect all Citizens in their Civil and Legal Rights, tavernkeepers, among others, are prohibited from refusing to sell to anyone on account of race, creed or color. But that is not sex. I know no statute in point.

Municipal regulations prohibiting the sale of liquor to women at bars or in barrooms are lawful. Re Bocca, Bulletin 105, Item 7. What the municipality may compel licensees to do, licensees can do for themselves. It is undoubtedly true that the free and unrestricted intermingling of men and women in many of our licensed places, coupled with the release of inhibitions and the let-down that the consumption of alcoholic beverages brings,

creates a serious social problem. Tavernkeepers are responsible for the maintenance of good order and decorous conduct on their premises. It is, then, but fair that they should have a correspondingly wide discretion in determining how their places should be run. He who takes the risk must be given the right to decide. Re Dorflinger, Bulletin 136, Item 12.

That, I believe, answers the question as you ask it.

Methinks, however, that the tavern operators who desire you to forego the recommendation are seized more with personal solicitude to save a few dollars than philosophic contemplation of women as the ultimate cause of our social problems - more a matter of economy than of Eve.

A promise to you to discontinue service to female patrons would have no legal sanction and hence would be incapable of enforcement. I suggest therefore that you insist on separate accommodations in every case.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

7. LICENSEES - MAXIMUM QUANTITY OF ALCOHOLIC BEVERAGES THAT MAY BE SOLD - NO LIMIT UNDER STATE LAW - THE MAXIMUM UNDER FEDERAL LAW DEPENDS ON THE TYPE OF TAX STAMP HELD.

Gentlemen:

We should like to be informed as to the maximum quantity of beer and liquors which a retailer is allowed to sell to a consumer.

Very truly yours,

Federal Wine & Liquor Co.

July 26, 1937.

Federal Wine and Liquor Company,  
Jersey City, N. J.

Gentlemen:

There is no limit, under State law or State regulations, on the maximum quantity of alcoholic beverages a retailer may sell to a consumer. So far as the State law is concerned, so long as the sale is made to a consumer and not for resale, the retailer may sell in as large a quantity as the consumer wants.

The State and Federal definitions of "retailer" and "wholesaler" are different. Under State law, a retailer is one who sells to consumers and a wholesaler is one who sells for purposes of resale. The Federal definitions, on the other hand, are based on the quantity of liquor comprising the sale.

I quote from the Notice of the Federal Bureau of Internal Revenue to retail liquor dealers and retail dealers in fermented malt liquor (Form 939, Revision of August, 1936):

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street Newark, N. J.

BULLETIN 264

AUGUST 1, 1938.

1. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - INDIRECT  
ADVERTISING OF PRICE - WINDOW DISPLAY FEATURING PRICE APPEAL  
DISAPPROVED.

Dear Sir:

I hand you herewith a photograph of a window display at present being installed in New Jersey retail premises by our employees. You will note that the basic part of the display consists of three pieces headlined, respectively, "The Wilken Family Certainly Gives You Big Value", "The Taste is Right", "The Price Is Right."

Recently there has been called to our attention the fact that agents of the Alcoholic Beverage Control Board in Paterson and vicinity have, without notice to us or our representatives, visited retail premises on which this display was installed and ordered the mutilation of the displays by removal of these headline lines.

We presume that the basis for this action was an interpretation of Section 3 of Regulation No. 21 of January, 1938. However, as we read this regulation and the numerous interpretations thereof our own window display seems far different from the practices which the regulation was intended to prohibit. It is our opinion that those practices include the lurid posting of large signs stating the price, or, what has a similar effect, references to price wars, special low prices, prices slashed, etc.

Our own sign on the other hand constitutes merely a moderate statement of a usual advertising claim, to wit, that the product offered for sale represents a good value at its ordinary and established price. There is no attempt to lure the consumer or any representation of special or extraordinary price but merely a moderate statement of what is fundamental in the advertising of every commodity.

Accordingly, we would appreciate an opinion on your part as to whether your agents in the cases above referred to correctly apply paragraph 3 of Regulation 21.

Yours very truly,  
Schenley Products Company,  
By - Milton B. Seasonwein.

July 27, 1938

Schenley Products Company, Inc.,  
New York City.

Att: Mr. Milton B. Seasonwein.

Gentlemen:

The principal feature of the display is price, viz., "The WILKEN FAMILY certainly gives you BIG VALUE", "The TASTE is right", "The PRICE is right", "It's our family's whiskey, neighbor - and neighbor, it's your price!"

The question is whether or not the display constitutes an advertisement, directly or indirectly, of the price of alcoholic beverages, contrary to State Regulations No. 21, Rule 3, which provides:

New Jersey State Library



July 29, 1938

South Jersey Bottling Co.,  
Camden, N. J.

Gentlemen:

The premises in respect to which a special permit is issued for a social affair becomes, for that day, a licensed premises. Re Gordon, Bulletin 191, Item 4; Re Hoffmeyer, Bulletin 206, Item 2.

Until the special permit becomes effective, no one may store any alcoholic beverages on premises that are not licensed. Consequently, you may not deliver alcoholic beverages to the picnic grounds on Saturday when the special permit is issued to a social organization for a Sunday picnic only.

Of course, if the special permit is issued in respect to premises which are already licensed under a regular retail license, you may make delivery to such premises at any time.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

14. MUNICIPAL REGULATIONS - "CURFEW" ORDINANCE PROHIBITING CHILDREN UNDER FOURTEEN YEARS OF AGE FROM LOITERING IN STREETS OR PUBLIC PLACES AFTER 9:30 P.M. - LICENSED PLACES ARE NOT "PUBLIC PLACES" WITHIN THE MEANING OF THE ALCOHOLIC BEVERAGE LAW - THE ORDINANCE, THEREFORE, IS NOT CONCERNED WITH LIQUOR CONTROL AND A MEMBER OF THE BOARD OF COMMISSIONERS WHO HOLDS A LIQUOR LICENSE IS NOT DISQUALIFIED FROM VOTING UPON IT.

July 30, 1938

Vincent J. Minetti,  
Town Clerk,  
Raritan, N. J.

Dear Mr. Minetti:

I have before me your letter of July 28th, enclosing copy of pending ordinance to prohibit children under the age of fourteen years from remaining, loitering, or being found upon any of the streets, alleys, parks, or public places in the Town of Raritan after 9:30 at night.

You ask "Can a member of the Board of Commissioners who also holds a retail consumption license vote on the enclosed 'curfew' ordinance."

There is nothing on the face of the ordinance which in any-wise deals with or concerns alcoholic beverages or any phases of the control of the traffic therein. The only possible question that can be raised in this respect is that the ordinance speaks of "public places." I have, however, heretofore ruled that a tavern is not a public place. See Re Dorsey, Bulletin 226, Item 11, and the cases therein cited.

R. S. 10:1-5 defines an inn, tavern, roadhouse or hotel or restaurant, or any place where beverages of any kind are retailed for consumption on the premises, to be a place of public accommodation, resort or amusement within the meaning of the Civil Rights Act. But

that is an express statutory definition applicable only to Chapter 1 of Title 10 of the Revised Statutes. It in nowise conflicts with the ruling made in Re Dorsey.

Hence, I conclude that the proposed ordinance has nothing to do with the liquor Control Act.

It follows that a member of your Board of Commissioners who happens to hold a retail liquor license is in nowise disqualified from voting upon such an ordinance.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

15. "OTHER MERCANTILE BUSINESS" - WHAT CONSTITUTES - HEREIN OF NON-ALCOHOLIC ACCESSORY BEVERAGES AS MARKING THE LIMIT - ALSO A NEW APPRAISEMENT OF WHAT IS SUCH AN ACCESSORY AND THE LIMITATIONS ON THAT TERM.

Dear Commissioner:

A client of mine holding plenary retail distribution license desires to know whether he may properly sell the following accessories without violation of the Alcoholic Beverage Control Act or your regulations thereunder. Such client considers the following items to be liquor accessories and desires to retail them as such:

Grenadine; Sparklet Syphons; Sparklet Refill Bulbs; Angostura Bitters; Cocktail Cherries and Cocktail Olives; bottled fruit juices such as lemon, lime, orange, for use in mixing cocktails; non-alcoholic sodas as ginger ale, lime rickey, club soda, Coca-Cola, sarsaparilla, orange, cream, lemon, seltzer.

Respectfully,  
Cyril J. McCauley

August 1, 1938

Cyril J. McCauley, Esq.,  
Union City, N. J.

My dear Mr. McCauley:

I have your letter and note that your client holds a plenary retail distribution license.

The first thing to ascertain is whether or not the municipality in which the licensed premises are situated has enacted an ordinance pursuant to R. S. 33:1-12 (Control Act, Sec. 13-3a) prohibiting the issuance of plenary retail distribution licenses "to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on."

If not, then there is no objection to the holder of such a license carrying as many side-lines as he pleases.

If, however, such an ordinance has been enacted, question arises as to what is meant by "any other mercantile business."

Of course, it means that wholly independent and distinct lines of business may not be conducted upon the premises licensed for the sale of packaged liquors, for instance, groceries, hardware, drugs, a department store.

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 77

June 5, 1935

1. LICENSEES - REQUIRED COOPERATION WITH CAMPAIGN AGAINST DRUNKEN DRIVING - NOTICE

TO MUNICIPAL ISSUING AUTHORITIES:

The campaign of A. W. Magee, Acting Commissioner of Motor Vehicles, against drunken driving commands respect and cooperation. I wish every motorist knew that 1443 automobile accidents were caused last year in New Jersey by drivers under the influence of liquor.

The automobile is here to stay but Repeal is on trial. If the privilege is to be continued, the intoxicated must keep his hands off the wheel.

Mr. Magee does well to emphasize the popular but misleading conception that one is not a drunken driver unless he is "soused", "pickled" or "plastered". For this is NOT the law. Our Court of Last Resort declared:

"\*\*\*it is not essential\*\*\*that the driver of the automobile be so intoxicated that he cannot safely drive a car. The expression - under the influence of intoxicating liquor - covers not only all the well known and easily recognized conditions and degrees of intoxication, but any abnormal, mental or physical condition which is the result of indulging, in any degree, in intoxicating liquors and which tends to deprive him of that clearness of intellect and control of himself which he would otherwise possess."

His poster should go far in bringing home to every driver who drinks - this means YOU.

He will send you shortly a supply of these posters which please deliver to each licensee, with instructions that these posters be kept prominently displayed and used as a personal text to those who brag they can "hold it".

Also call their attention to the State-wide rule:

"No alcoholic beverages shall be sold to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated."

It may be that you will think of other places where the poster can be used in the public interest to advantage. If the supply runs short, contact Mr. Magee for more. He, like his predecessor, is an avowed foe of drunken driving.

In view of the pledged cooperation of President Wm. G. Wellhofer of the New Jersey Licensed Beverage Association, I do not think it necessary to make a regulation requiring display of the poster, but will do so if it appears necessary.

Your service in this matter will be appreciated.

Cordially yours,  
D. FREDERICK BURNETT,  
Commaissioner

Dated: June 1, 1935

I wonder what she thought it meant when her license was suspended! There is no obligation to explain to those who do not ask. Her ignorance that she could not lawfully sell liquor while her license was suspended does not cast the burden on the Department to see that she does know. The shoe is on the other foot. It was her business to know at her peril what she could do and what she could not do. As was said in Braunstein vs. Bridgeton, Bulletin 63, Item 9: "Rather than lift his finger to ascertain what he could do and what he could not do, he took a chance and was caught."

The petition is denied.

Dated: June 1, 1935

D. FREDERICK BURNETT,  
Commissioner

4. REVOCATION PROCEEDINGS - PUNISHMENT - DISCRETION OF ISSUING  
AUTHORITY

May 31, 1935

Mr. George B. Conover,  
Absecon, N. J.

Dear Mr. Conover:

I have for consideration the petition signed by some 350 citizens of Absecon City asking that I revoke the Myrtle Downie - Estates Casino license for violation of the Female Impersonator Rule.

I transmitted this matter to the City Council who, with reasonable promptness, tried the licensee, found her guilty as charged and suspended her license for thirty days. Subsequently they cut the suspension down to eight days on the ground, as resolved, that she had been sufficiently punished and that the suspension worked a hardship on her family and the employees of the Casino.

While I have great respect for the opinion of representative citizens of your community, these petitions are not their considered judgment after hearing both sides, but were signed in advance of the trial. There is nothing in them, therefore, which in anywise shows an abuse of power by the City Council. The decision was wholly within its jurisdiction. While the net punishment may appear on the surface to be incommensurate with the offence, that does not constitute any ground on which I may lawfully interfere.

If there are any further complaints about this place breaking the rules concerning female impersonators, I will entertain, without presently deciding, a petition praying that revocation proceedings be handled by this Department direct.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

5. APPELLATE DECISIONS - BARRY VS. SPRING LAKE HEIGHTS

JOSEPH E. BARRY and HARRY  
BARRY, PARTNERS, trading  
as BARRY'S,  
Appellants, )

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street, Newark, N. J.

BULLETIN 279

NOVEMBER 10, 1938.

1. APPELLATE DECISIONS - MASON v. EGG HARBOR.

JOEL MASON,	)	
	Appellant,	)
-vs-	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF EGG HARBOR,	)	
	Respondent	)

-----

Rudolph S. Ayres, Esq., Attorney for the Appellant.  
C. B. Dixon, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at the foot of Jeffers Landing Road, Egg Harbor Township.

The Township has an approximate area of 70 square miles and a population (in 1930) of 3,024 persons. Its southern boundary is the Great Egg Harbor River, whose waters are used by both fishermen and bathers. Appellant's premises (a 1½-story bungalow) are located in open country at the shore of this River. He there conducts an establishment serving sandwiches, soft drinks, and (on infrequent occasions) regular meals on special order. During the summer week-ends, his place is patronized by 150 to 200 persons. The nearest liquor place is 3½ miles, and the next nearest 4½ miles away.

Respondent contends that its denial of appellant's application was valid because (1) the municipal quota of 25 consumption licenses (fixed by Ordinance of May 7, 1938) was filled, and (2) that to license appellant's place will violate the geographic scheme of distribution of licenses set forth in that Ordinance.

As to the Township's quota, the evidence (together with the records of this Department) reveals the following: On June 17, 1937, respondent adopted a resolution limiting plenary retail consumption licenses in the Township to 20. In July 1937, the Municipal Clerk, pursuant to respondent's instructions, refused appellant an application blank for a consumption license on the ground that this quota was exhausted. Thereafter, on November 13, 1937, and on January 22, 1938, respondent by resolution raised the quota to 21 and 23 respectively. (These resolutions were invalid by reason of R. S. 33:1-40, Control Act, Sec. 37, which requires that no municipal quota may be fixed on or after July 1, 1937 except by ordinance). At one of respondent's meetings in March, 1938 appellant informally requested a consumption license, but there being no formal application on file, respondent refused to consider this request. Thereafter, on May 7, 1938, it adopted, on final reading, an ordinance raising the quota to 25, which was exhausted on that same day. Appellant's present application, filed on June 14, 1938, was denied on June 27th because of the ordinance and the filled quota.

From the time of adopting the quota of 20 through the time of denying appellant's present application, the Township Committeemen have remained the same. Inasmuch as these Committeemen did not appear at the hearing on appeal, there is no personal explanation as to why they successively raised the quota on consumption licenses. It may fairly be assumed that the increase of the original quota of 20 to the present quota of 25 is partially explainable by the fact that 2 seasonal licenses, originally allowed in the resolution of

the State Prison was good, and that this should be taken into account in determining whether he has conducted himself in a law-abiding manner for the past five years. I have heretofore ruled that the time while one is confined for a crime is not a part of the probationary period. Case No. 16, Bulletin 222, Item 12; Case No. 31, supra. The ruling made in those cases applies herein.

Petition to remove disqualification is, therefore, denied, with leave to file a new petition on or after September 29, 1939, which will be five years from the date of petitioner's release.

D. FREDERICK BURNETT,  
Commissioner.

Dated: November 3, 1938.

8. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - REVOCATION INDICATED AND EFFECTED.

In the Matter of Disciplinary Proceedings against )

Daniel J. Roselle, )  
T/a Log Cabin Inn, )  
985 Frelinghuysen Avenue, )  
Newark, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-892, issued by the Newark Municipal Board of Alcoholic Beverage Control. )  
----- )

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.  
Jacob Pfeferstein, Esq., Attorney for the Licensee (Morris Feinberg, Esq., of Counsel).

BY THE COMMISSIONER:

The licensee was charged with

- (1) Employing a female bartender and female waitresses in violation of Section (a) of resolution of the Newark Municipal Board of Alcoholic Beverage Control adopted August 29, 1934;
- (2) Employing and permitting females to act as hostesses in violation of Section (c) of the same resolution;
- (3) Sale and service of alcoholic beverages after 3:00 A.M. during hours prohibited by Section 1 of ordinance adopted by the Newark Board of Commissioners on December 23, 1936;
- (4) Keeping the licensed premises open after 3:00 A.M. during hours prohibited by the same ordinance;
- (5) Employing persons who would fail to qualify as licensees in violation of R. S. 33:1-25 and 26 (Control Act, Sections 22 and 23);
- (6) Permitting female impersonators and persons of ill repute upon the licensed premises in violation of State Regulations 20, Rule 4;
- (7) Selling alcoholic beverages to a person actually or apparently intoxicated in violation of State Regulations 20, Rule 1.

The licensee pleaded not guilty to all of the foregoing charges but at the conclusion of the State's case retracted his plea

of not guilty as to charges 1, 3 and 4, and as to them entered a plea of guilty instead.

So far as they bear on charges 2, 5, 6 and 7, as to which the licensee denied guilt, the facts are as follows:

On July 14, 1938, Investigator King entered the licensed premises and had no sooner ordered a drink than he was approached by one Julia Salony, who sat beside him and made the usual request for a cigarette. Obtaining the cigarette, she asked him to buy her a drink of whiskey, which he did. Shortly thereafter she was called upon to sing from the dance floor.

While he sat at the bar, two men entered and stood at the bar. In conversation with King, the bartender referred to them as "fags" and remarked that they were "married" to each other. Pressed for an explanation by the Hearer, the witness King described a "fag" as a pervert, having abnormal sexual relations with men and/or women, and who, by manner of speech, movement of the body and expression of the face seeks to attract attention in a manner closely resembling that commonly attributed to females. In a word, female impersonators.

As the evening wore on, King observed another man come in. He was first solicited to buy a drink by one Cecelia Clark, who refused to take beer, insisting on a highball. Being unsuccessful, she left, whereupon one Pearl Williams approached, and, after protracted persuasion, succeeded in getting the customer to buy her a whiskey. Becoming disgusted with her insatiable demands for drinks, the patron disparagingly referred to her as a "woodpecker" because of her constant knocking on the bar asking for more drinks, and left with the observation that he was no "Santa Claus."

As three o'clock approached, the bartender left the bar, the entertainers and waitresses went into a dressing room, and the patrons who were in the know repaired to the Men's Room to await the clearing out of the patrons who were not. The entertainers and waitresses reappeared in the barroom at about 3:15 dressed in street clothes and business continued merrily until a raiding party of Newark Police and investigators of this Department entered the premises at 4:45 A.M. In the interim, the licensee sat outside and acted as a look-out and the bartender, now acting as a waiter, looked over prospective customers from a window near the rear entrance. At about four o'clock a man was admitted, his body shaking, he staggering and sagging, holding himself upright by grasping a partition around the bar - thoroughly intoxicated. He was nevertheless served with alcoholic beverages.

At 4:45 A.M., when the raiding party entered, the place was in total darkness and the licensee claimed that there was no one there. The officers requested that the lights be turned on and insisted that the door to the dressing room be unlocked. Crowded inside in darkness were six girls, the entertainers, waitresses and the manager. At police headquarters, they gave statements disclosing that the three entertainers were residents of New York. The licensee held no permit authorizing their employment.

On the charge of employing hostesses (No. 2 above), the licensee testified that he had never employed any females for that purpose but hired only entertainers. On cross-examination, however, he defined a hostess as one who doesn't know dancing or singing and is not an entertainer. Asked whether his entertainers understood that they had to drink with customers, he first said that he did not permit them to but subsequently admitted that between floor shows they had drinks at the bar and paid for their own drinks - "sometimes." The plain intent of the regulation is to prohibit female employees from soliciting patrons to buy them drinks. I find the licensee guilty on the charge of employing females and permitting them to act as hostesses.

On the charge of employing persons who fail to qualify as a licensee (No. 5 above), the licensee admits that he knew that the three entertainers lived in New York. He also admits knowing that special permits were necessary. Yet he contented himself with asking each girl whether she held a special permit from this Department and when each said "Yes", he was satisfied. I find the licensee guilty on this charge.

On the charge of permitting female impersonators upon the licensed premises (No. 6 above), the defense was a categorical denial by the bartender. The denial might have had more weight had the witness not professed to be ignorant of what a "fag" was. With respect to the two men described by King, even he admitted that their voices were "a little off tune." I find the licensee guilty on this charge.

On the charge of sale of alcoholic beverages to an intoxicated person (No. 7 above), again the defense was a categorical denial. Some attempt was made on cross-examination to create a belief that possibly the customer that King observed was ill and that his actions were thus explainable. Investigator King has been with this Department almost four and one-half years. In that time he has, in line of duty, visited literally thousands of taverns. From his wide experience he, in effect, qualifies as an expert on intoxication. If he swears the patrons was intoxicated, I believe him. I find the licensee guilty on this charge.

There remains only the question of the penalty to be imposed. The licensee's previous record with the Newark Police and the Municipal Board of Alcoholic Beverage Control is far from stainless. In September, 1934, his bartender was arrested for the sale of liquor in unlabeled bottles and refilling bottles, and was fined \$100.00. In August, 1936, disciplinary proceedings were conducted by the Newark Municipal Board on charges of sale after hours, sale to intoxicated persons and hindering investigation. The charges were dismissed with a reprimand and warning although as a result of the same incident the licensee had been found guilty of selling during prohibited hours in the First Criminal Court in June 1936. Again in February, 1937, disciplinary proceedings were had against the licensee by the Newark Board on charges of sale during prohibited hours and failure to provide an unobstructed view of the interior. Although he was found guilty on the latter charge, sentence was suspended because the condition complained of had in the meantime been corrected. In February, 1938, on routine inspection of the premises, disqualified entertainers were found without permits.

In view of the licensee's previous record, and in view of the wholesale violations discovered on one visit to the licensed premises, it is clear that the licensee has no conception of his obligation to observe the law. Revocation is indicated and will be effected.

Accordingly, it is on this 5th day of November, 1938, ORDERED that plenary retail consumption license C-892, heretofore issued to Daniel J. Roselle, t/a Log Cabin Inn, for premises 985 Frelinghuysen Avenue, Newark, N. J., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

D. FREDERICK BURNETT,  
Commissioner.



STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street Newark, N. J.

BULLETIN 326

JUNE 27, 1939

1. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - 30 DAYS.

In the Matter of Disciplinary :  
Proceedings against :

PETER ORSI,  
112 Bank Street,  
Newark, New Jersey,

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Con- :  
sumption License #C-548, :  
issued by the Municipal Board :  
of Alcoholic Beverage Control :  
of the City of Newark. :  
. . . . . :

Richard E. Silberman, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
Joseph J. Breitner, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with permitting female imperson-  
ators at his tavern, contrary to Rule 4 of State Regulations No. 20.

On Saturday night, March 4, 1939, at about 11:20 o'clock,  
Investigator Robbins of this Department entered the defendant's  
tavern followed, some fifteen minutes later, by Investigator Clinch  
(who, in the interim, observed the tavern from across the street).

Robbins testified that thirty-five or forty persons were in  
the bar room when he entered; that, after he was at the bar for a  
few minutes, a man "made up with rouge, lipstick, mascara, and  
fingernail polish" approached him and, in a very effeminate voice,  
asked Robbins to buy him a drink and fondled the investigator's legs  
and chest with his hands; that he (the investigator) pushed the man  
away and walked toward the back room, where he saw two pairs of men  
dancing together, one man in each pair being made up in the same  
way as the man who had approached him at the bar; that another man,  
similarly made up, was playing the piano; that Investigator Clinch  
entered about ten minutes thereafter; that, about three or four  
minutes after Clinch entered, the investigators identified them-  
selves to the defendant and asked why he was allowing "these 'fags'"  
in the place; that the defendant replied that he "had been trying  
to get rid of them, but they keep coming back every week"; that the  
defendant then asked the investigators to put the "fags" out; that,  
in order to see whether the defendant knew of the presence of all  
the "fags" upon the premises, he (Robbins) allowed the defendant  
to point them out to him; that the defendant pointed out five such  
men, all of whom were so obviously made up with cosmetics that "they  
stood out from the crowd very much"; that, on the investigators'  
request, these men left the tavern, without comment; that he  
(Robbins) recognized one of them as a female impersonator whom he  
had seen in another tavern; that the investigators left the tavern  
shortly before midnight, and returned at 2:20 a.m. and were then  
informed by the defendant that, since they had left the tavern, "a  
great number" of "fags" had entered his place but all, except two,  
left on his demand; that he (the defendant) asked the investigators  
to eject these remaining two.

Investigator Clinch testified in corroboration of Robbins with reference to what occurred in the tavern while he (Clinch) was there. He further testified that, while he was observing the tavern from the outside, a group of four boys congregated in front of it and poked jibes at the men who entered it.

There was also submitted in evidence a signed statement taken by the investigators from the defendant when they returned to his tavern at 2:30 a.m. This statement (which, the investigators testified, was read to and by the defendant before signed) admits the presence of "fags" at his tavern.

The defendant, his night bartender, his day bartender (who testified that he was in the tavern at the time) and the defendant's waiter all took the stand and categorically denied that there were any men on the premises who were made up with cosmetics or impersonated women. The licensee declared emphatically that he did not know that the men who were ousted were perverts or "fairies" - or, more politely, female impersonators.

However, the defendant's signed statement (which he seeks to discredit by stating that he signed it without knowing what it contained) and the testimony of the investigators convince me that female impersonators were knowingly permitted in the defendant's tavern and that, in fact, the tavern was a rendezvous for such persons.

His counsel argues that it is unfair to class the persons ousted as female impersonators because they had greasepaint, rouge or powder on their faces - that they might have been men engaged in theatrical work and have visited the tavern after leaving the theatre - or they might have been men who had gone to a barber shop and left with powder on their faces. Possible - yes! But not at all probable!! Real men don't act that way, whether they are in the theatrical line or have just left a barber shop. I am not at all squeamish in imputing knowledge to a licensee of the character of these persons when anyone can tell objectively and most of us know what they are. The licensee had no trouble in picking them out.

I find the defendant guilty as charged.

There is no excuse for this sort of thing. If a licensee disapproves of the presence of "fags" at his tavern and they refuse to leave on his demand, he may always resort to the simple expedient of calling the police.

The defendant's license will be suspended for thirty days.

Accordingly, it is, on this 22nd day of June, 1939, ORDERED that Plenary Retail Consumption License #C-548, heretofore issued to Peter Orsi, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended until the end of its term, effective June 25, 1939, at midnight (Daylight Saving Time); and it is

FURTHER ORDERED that no further license be issued to this licensee or for said premises prior to July 26, 1939.

D. FREDERICK BURNETT,  
COMMISSIONER.

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street, Newark, N. J.

BULLETIN 390

MARCH 8, 1940.

1. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - PETITION  
FOR REVIEW DENIED.

In the Matter of Disciplinary  
Proceedings against

PETER ORSI,  
112 Bank Street,  
Newark, N. J.,

ON PETITION FOR REVIEW  
ORDER

Holder of Plenary Retail Con-  
sumption License C-548 (for the  
fiscal year 1938-39), issued by  
the Municipal Board of Alcoholic  
Beverage Control of the City of  
Newark.

M. Richard Lifland, Esq. and Maurice H. Pressler, Esq.,  
Attorneys for Petitioner.

BY THE COMMISSIONER:

Petitioner prays that an order heretofore entered  
herein on June 22, 1939 (Bulletin 326, Item 1) be vacated and  
for nothing holden for the reasons that (1) there is no evi-  
dence whatsoever that there was a known female impersonator  
on the premises, and (2) the charge as drawn does not charge  
petitioner with any violation of a State regulation.

The petition which was filed on February 9, 1940 might  
well be denied upon the ground that petitioner is guilty of  
laches. The suspension has already been served.

As to the merits: Petitioner contends, in support of  
his first reason, that the present case is precisely the same  
as Re Nathan Williams, Bulletin 341, Item 9. In the Williams  
case I vacated an order of suspension previously entered be-  
cause, upon review, I found that the evidence was not suffi-  
cient to show that the woman was a known prostitute or was a  
prostitute at the time in question. In the present case, how-  
ever, the testimony of the investigators as to the appearance  
of these frequenters of the licensee's place of business was  
sufficient to show that they were known female impersonators.  
While the licensee denied that he knew that the men who were  
ousted were perverts or "fairies", or, more politely, female  
impersonators, I was convinced, from his signed statement,  
wherein he admitted the presence of "fags" at his tavern, and  
the testimony of the investigators, that female impersonators  
were knowingly permitted in the licensed premises and that, in  
fact, the tavern was a rendezvous for such persons. As I said  
in the Conclusions previously entered:

"I am not at all squeamish in imputing knowledge  
to a licensee of the character of these persons  
when anyone can tell objectively and most of us  
know what they are. The licensee had no trouble  
in picking them out."

Hence, on reviewing the testimony, I find that there is ample evidence that the licensee permitted known female impersonators at his tavern.

As to the second reason: The defendant was charged with having "allowed, permitted and suffered female impersonators" in and upon his licensed premises "contrary to Rule 4 of State Regulations No. 20". He contends that no violation of a State regulation has been charged because the word "known" is omitted before the words "female impersonators". The same point was considered in Re Sengebush, Bulletin 311, Item 8, wherein defendant moved to dismiss on the ground that the charge was fatally defective in that it did not allege that the defendant permitted "known" prostitutes and other persons of ill-repute at his tavern. In that case I said:

"The contention rests upon the fact that the word 'known' appears in Rule 4 of State Regulations No. 20, which reads as follows:

"'No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute.'

"It is definite that a licensee, to be found guilty of violating this Rule, must have tolerated the undesirables in his licensed premises while knowing of their unsavory character. Re Kaas, Bulletin 239, Item 1; Re Foster and Clauss, Bulletin 248, Item 4. The question presented by the defendant's motion is whether the charge sufficiently apprises him of the fact that he is alleged to have permitted 'prostitutes and other persons of ill repute' at his tavern while knowing of their character.

"The charge, in accusing the defendant of having 'allowed, permitted and suffered' prostitutes and other persons of ill repute at his licensed premises is, by use of those words, reasonably clear to the effect that the defendant is being accused of having tolerated the undesirables at his tavern while aware of their character. As I said in Re Kaas, supra:

"'Each one of these operative verbs just quoted necessarily mean that the licensee, knowing who these people are and what they are, nevertheless tolerated them on licensed premises.'

"There is no contention that the defendant was actually misled by the charge or unaware of what he was being called upon to answer. Being clear in character, and specifying the State Rule allegedly violated, the charge, while not embodying the exact language of the Rule, is nevertheless sufficient. Cf. Sawicki v. Keron, 79 N.J.L. 382 (Sup. Ct. 1910).

"Accordingly, the defendant's motion is denied."

In the present case, the charge as served upon the licensee was sufficient to apprise him of the offense. The question of his personal knowledge of the character of these frequenters of his place was the very crux of the case. The mere omission of the word "known" in nowise prejudiced him and on the merits he was clearly guilty of a violation of Rule 4 of State Regulations No. 20.

The petition is denied.

D. FREDERICK BURNETT,  
Commissioner.

Dated: March 3, 1940.

2. DISCIPLINARY PROCEEDINGS - GAMBLING - PAY-OFF ON BAGATELLE MACHINES - INADEQUATE PENALTIES.

March 4, 1940

W. H. Jamouneau,  
Town Clerk,  
Irvington, N. J.

My dear Mr. Jamouneau:

I have before me staff report and your letters of February 8th and 14th re disciplinary proceedings against

- |                           |                        |
|---------------------------|------------------------|
| 1. Peter Scheller         | 2. Henry Wenzel        |
| 1407-9 Springfield Avenue | 865 Springfield Avenue |

I note that both were charged with making pay-offs on scores obtained on bagatelle machines, the one in cash and the other in merchandise, and that on confession of guilt the license of each was suspended for one day.

The one-day penalties are, of course, inadequate. The recommended minimum for violations of this sort is five days with a possible remission of two days in the event that the licensee pleads guilty in advance of hearing and thus saves the Board and this Department the time and expense of hearing.

Both penalties were imposed on February 13th. In my letter of February 5th commenting on a one-day suspension for a sale to minor in the case of Mrs. Albert Splan I asked whether the Board wished me to take over its duties and handle all disciplinary matters directly.

Does it?

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street, Newark, N. J.

BULLETIN 474

AUGUST 20, 1941.

1. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE IMPERSONATORS IN AND UPON THE LICENSED PREMISES - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary  
Proceedings against

M. POTTER, INC.,  
15 Central Ave.,  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License No. C-655 for the past  
fiscal year (1940-41) and presently  
holder of Plenary Retail Consumption  
License No. C-697 for the current  
fiscal year (1941-42), both issued  
by the Municipal Board of Alcoholic  
Beverage Control of the City of  
Newark.

-----)  
David Endler, Esq., Attorney for the Licensee Corporation.  
Stanton J. MacIntosh, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

The licensee has entered a plea of guilty to a charge which alleged that known female impersonators were permitted in and upon the licensed premises, in violation of Rule 4 of State Regulations No. 20.

The file discloses that investigators of this Department observed in the licensed premises a group of men whose voices, gestures and actions were effeminate. The evidence then available was not considered adequate to establish knowledge on the part of any officer of the corporation or responsible employee that the men observed in the premises were female impersonators. Subsequently, the President of the licensed corporation was cautioned by members of the local police department specifically against permitting in the licensed premises female impersonators, often known as "fags" and "fairies."

Subsequently, investigators of this Department again on two occasions observed groups of men in the premises. These male patrons embraced one another, kissed one another and danced with one another. Staff reports show that these patrons disported themselves in manner entirely inconsistent with the normal conduct of men. In fairness to the licensee, however, it should be noted that no actual acts of immorality were committed.

The question of penalty has received careful consideration. The presence of female impersonators in and upon licensed premises presents a definite social problem. The mere thought of such perverts is repugnant to the normal person. The deep-rooted personal contempt felt by a normal red-blooded man might well influence a decision and cause the imposition of an overly heavy-fisted penalty. 30  
Certainly, if the licensed premises were conducted in such manner as

to constitute a nuisance, and such circumstances were shown as to indicate the commission of unnatural intercourse in the licensed premises, outright revocation may be well deserved. Re McCracken v. Caldwell, Bulletin 456, Item 3. Again, facts and circumstances within the knowledge of a licensee might be ample justification for a drastic thirty-day suspension. Re Orsi, Bulletin 326, Item 1.

On consideration of the problem and factors involved, and on the basis of Departmental experience, I believe that the minimum penalty for this violation, in the absence of any aggravating circumstances, and with a completely clear previous record against a licensee, should be fifteen days. The usual five days will be remitted for entry of the guilty plea, thereby saving the Department the time and expense incident to proving its case.

This proceeding, though instituted during the last licensing term which expired June 30, 1941, does not abate, but remains effective against defendant's renewal license for the current term.

Accordingly, it is, on this 7th day of August, 1941,

ORDERED, that Plenary Retail Consumption License No. C-697, heretofore issued to M. Potter, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is suspended for a period of ten (10) days, effective August 11, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - INSUFFICIENT IDENTIFICATION OF PREMISES WHERE ALLEGED SALE TOOK PLACE - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against

HARRY GOLDBERG,  
524 Broadway,  
Newark, N. J.,

Holder of Plenary Retail Distribution License D-65 for the fiscal year expiring June 30, 1941, and now holder of similar license D-19 for the current (1941-42) fiscal year, both licenses having been issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ON HEARING  
CONCLUSIONS AND ORDER

Herman N. Goldberg, Esq., Attorney for Defendant.  
Charles Basile, Esq., Attorney for State Department of Alcoholic Beverage Control.

The defendant pleads not guilty to charges that he sold an alcoholic beverage to a minor in violation of the statute and state rule. See R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, N. J.

BULLETIN 491

JANUARY 27, 1942

1. APPELLATE DECISIONS - PLAYDIUM, INC. v. MUNICIPAL BOARD OF THE CITY OF ORANGE.

LOCAL ISSUING AUTHORITIES MAY ACT ONLY IN FORMAL MEETING  
ASSEMBLED - BURDEN OF ESTABLISHING ERROR IN RESPONDENT'S ACTION  
RESTS UPON APPELLANT.

PLAYDIUM, INC., a corporation )  
of New Jersey, )

Appellant, )

ON APPEAL  
CONCLUSIONS AND ORDER

-vs- )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF ORANGE, )

Respondent. )

- - - - - )

Samuel S. Ferster, Esq., Attorney for Appellant.  
Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial by respondent, of ap-  
pellant's application for a transfer of a Plenary Retail Consumption  
License from James Joseph McGrath to Playdium, Inc. and from 560  
Forest Street to 512 Main Street in the City of Orange.

In its petition of appeal, the appellant alleges that the  
action of the respondent was erroneous in that the denial of the  
application was arbitrary, capricious, without warrant of law and  
an abuse of respondent's discretion. The respondent's answer al-  
leges that the refusal of the appellant's application was based on  
the evidence presented below and was made in the exercise of re-  
spondent's sound discretion.

Because of the issues raised by appellant at the hearing,  
it may be necessary to consider a number of facts which ordinarily  
would not be considered material.

The evidence discloses that, for a number of years prior  
to July 1, 1940, a Plenary Retail Consumption license had been in  
existence for a building occupied by the Knights of Columbus and  
located on a portion of the plot of ground on which the building at  
512 Main Street is now located. This license was not renewed on  
July 1, 1940, and sometime thereafter the old building was torn  
down. After the demolition of the latter, the owner of 512 Main  
Street, having first obtained a building permit, began the construc-  
tion of a modern business building containing a number of stores  
and a bowling alley.

The evidence discloses that in July 1941 Mac A. Kaplus, an  
officer of the appellant corporation, filed an application with the  
respondent requesting a transfer of a Plenary Retail Consumption  
license to him and to the premises now sought to be licensed. That  
license had been held for the prior fiscal year by one Curcio, for



3. DISCIPLINARY PROCEEDINGS - EMPLOYING AND PERMITTING THOSE HAVING KNOWN CRIMINAL RECORDS ON THE LICENSED PREMISES - HEREIN OF THE WIFE - PERMITTING LEWD AND FILTHY STORIES BY ENTERTAINERS CONSTITUTES IMMORAL ACTIVITY - SALES AFTER HOURS - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

JAMES R. McClyment,  
549 S. Broadway,  
Gloucester City, N. J.,

Holder of Plenary Retail Consumption License C-11, issued by the Common Council of Gloucester City,

THEODORE TRINKELLA,  
239 S. Quince Street,  
Philadelphia, Pa.,

Holder of Employment Permit No. 4048, issued by the State Commissioner of Alcoholic Beverage Control,

Alfred B. Cuneo,  
239 S. Quince Street,  
Philadelphia, Pa.,

Holder of Employment Permit No. 6835, issued by the State Commissioner of Alcoholic Beverage Control.

Frank M. Lario, Esq., Attorney for defendant-licensee.

No appearance for defendant-permittees.

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER: (Orally)

This matter comes before me upon charges preferred by the Department of Alcoholic Beverage Control and served upon the defendant-licensee alleging: (1) He employed female impersonators, in violation of Rule 4 of State Regulations No. 20; (2) he permitted lewdness and immoral activity and suffered his licensed premises to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20; (3) he knowingly employed non-residents without permits, in violation of Rule 1 of State Regulations No. 11; (4) he knowingly employed Edna McClyment, a person who would fail to qualify as a licensee by reason of her convictions of a crime involving moral turpitude, in violation of R. S. 33:1-26; (5) he permitted said Edna McClyment, a known criminal and person of ill-repute, on his licensed premises, in violation of Rule 4 of State Regulations No. 20; (6) he sold alcoholic beverages after 2:00 A.M. on Sunday, September 7, 1941, in violation of Section 3 of an ordinance concerning alcoholic beverages adopted February 3, 1938 by the Mayor and Common Council of the City of Gloucester City; and (7) he permitted females employed on the licensed premises to accept beverages at the expense of customers, in violation of Rule 22 of State Regulations No. 20.

In addition, there is before me charges brought by the Department against the defendant-permittees, served on them by registered mail, alleging that they were employed as female impersonators by the defendant-licensee.

At the hearing on these charges begun on December 19, 1941 and continued on January 14, 1942, the defendant-licensee appeared and entered a plea of non vult to the sixth charge and not guilty as to all other charges. The defendant-permittees, Theodore Trinkella and Alfred B. Cuneo, failed to appear, although it appears from the record that the registered letters containing copies of the charges, addressed to them at the addresses given by them at the time they applied for employment permits, were received. It also appears from statements made by counsel that there has been some correspondence with one or both of the permittees in question, advising them of the hearing in their cases.

With respect to the charge against Theodore Trinkella and Alfred B. Cuneo, I am going to revoke their employment permits because of their failure to appear in answer to the charges and defend themselves. Because of the state of the proof in the case of James R. McClyment with respect to the charge of female impersonation, which leaves me in some doubt, I will permit the defendant-permittees to appear before the Department and reapply for employment permits. At that time, they will be given an opportunity to explain their activities and their failure to appear at the hearing. In the meantime, their permits will stand revoked.

The hearing on the charges against the defendant-licensee, James R. McClyment, has consumed one full day and a portion of a second day. With the permission of counsel, there has been entered on the record a stipulation that Mr. and Mrs. McClyment have entered into an agreement to sell their premises and have made arrangements to purchase an entirely different type of business, and will go out of the liquor business entirely. Counsel for the defendant-licensee has moved for, and I have granted his motion to withdraw the plea of not guilty to Charges 1, 2, 3, 4, 5 and 7, and in lieu thereof, to enter a plea of nolo contendere.

With respect to the entire case against James R. McClyment, I have this to say: If rumor were fact I would be inclined to find the defendant-licensee guilty on all of the charges. However, notwithstanding the fact that I am the head of an administrative agency, I am, none the less, bound by some of the rules of evidence, at least those the purpose of which is to afford the defendant that protection to which he is undoubtedly entitled under the American system.

I am in some doubt as to whether or not the State has sustained the burden of proof with respect to the first charge, namely, that of employing known female impersonators. The testimony indicates that some of these employees came dangerously close, in their type and by their actions, to being female impersonators, but there is still some doubt. The licensee should be extremely careful to avoid even the appearance of employing those who have been found objectionable either by the Department or by the public at large.

With respect to the second charge, again there is some doubt in my mind with regard to the question of female impersonation. I don't believe the State has proven there was immoral activity in the usual sense of the word on the licensed premises, although the State's proof does indicate that there were stories told that were highly improper, contrary to public morals and to the code of ethics we expect licensees to live up to. Here again, it should be noted that the

licensee has denied, through his counsel, that these stories were told in such a manner that the general public could hear them, and, in fact, my recollection of the testimony is that the licensee denied entirely that the stories had been told. However, I know of no reason why I should doubt the veracity of the State's witnesses. The narrating of lewd and filthy stories by entertainers itself is sufficient to constitute a lewd and immoral activity on the part of the licensee within the meaning of the charge and in violation of Rule 5 of State Regulations No. 20. Stories of the type described by the State's witnesses in their testimony are definitely out of order and the responsibility is on the licensee to see that the telling of such filthy stories does not occur on his premises. If he is unwilling or unable to assume this responsibility, he should get out of the liquor business.

With respect to the third charge, knowingly employing entertainers who were disqualified because of their non-residence and who did not hold employment permits, here too the testimony is in conflict. The statements offered in evidence by the State indicate that some of these folks who were employed upon the occasion of the A. B. C. men's visit were in fact non-residents. The licensee signed such a statement. On the other hand, the licensee subsequently testified that he inquired of the entertainers as to their residence, and in every instance they gave a New Jersey residence. I am of the opinion, however, that at least some of these employees were disqualified by virtue of being non-residents.

With respect to the employment of Mrs. McClyment, which is charged as being a violation of the Act, I have noted that the licensed premises are also the home of Mr. and Mrs. McClyment. I have been advised by counsel representing the defendant that on one occasion, Mrs. McClyment asked the former Commissioner for his opinion with respect to her presence on the licensed premises. Assuming this to be the case, it is, none the less, my opinion that Mrs. McClyment should not have frequented that portion of the licensed premises which was used for the sale and service of alcoholic beverages. I reach this conclusion because of her prior record, which was known, of course, to herself and known also to the licensee because of previous charges which were preferred against him by the local board. We cannot permit those with known criminal records to be present on licensed premises, and where the relationship happens to be that of husband and wife, it is just unfortunate. Here again, we have to remember that those who are in the liquor business are in a privileged business and that they must obey regulations and statutes which do not generally apply in industry and business as a whole, and they will, therefore, have to adjust their private lives in order to first obey the law.

With regard to Charge 6, that of serving after hours, there was an original plea of non vult and there is no question with regard to the fact that such sale did occur.

Charge 7 has given me some trouble. The State has offered proof that an employee of the licensee declared herself in on a party after the closing hour and was served or at least drank a glass of beer, payment of which was made by guests; that Mrs. McClyment had a glass of Coca-Cola, paid for by a guest. These constitute a violation of the regulation.

All in all, in taking into consideration the previous record of the licensee and in taking into consideration the licensee's assurance to me that he is going out of the liquor business, which is compulsory, I am, none the less, going to suspend the licensee's

license for thirty (30) days, with the privilege to whosoever may purchase the business and upon securing the transfer of the license to apply for the lifting of the suspension at the conclusion of three (3) weeks. Application may be made prior to the expiration of the three-week period upon a showing that a bona fide sale has been concluded and that there is no relationship between the new owner of the premises and the former owner. I will expect the defendant-licensee not to go back into the liquor business without first applying to the Department for permission so to do.

I want it distinctly understood, for the benefit of the defendant, that I do not consider the State to have carried the burden of proof in all of these charges; that under the plea he is not to be considered guilty of each and every one of the charges, although there has been sufficient guilt proven to warrant the suspension imposed.

An Order will be entered in accordance with the opinion I have just given. I will make the Order effective at the closing of business Saturday, January 17, 1942.

Accordingly, it is, on this 16th day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-11, heretofore issued to James R. McClyment, be and the same is hereby suspended for a period of thirty (30) days, effective Sunday, January 18, 1942, at 2:00 A. M. Leave is hereby given to apply to me for an order lifting said suspension upon presenting proof that the licensed business of James R. McClyment has been sold to a bona fide purchaser or purchasers; that the license of James R. McClyment, which is hereby suspended, has been transferred by the Common Council of the City of Gloucester City, in the exercise of its own sound discretion, to a bona fide purchaser or purchasers; and that neither the said James R. McClyment nor Edna McClyment, his wife, have any interest or connection, directly or indirectly, in said license or licensed business, but in no event will an order lifting the suspension be entered herein until the expiration of at least twenty-one days from the effective date hereof; and

It is further ORDERED, that no liquor license be granted in this State to either the said James R. McClyment or Edna McClyment, his wife, unless and until approval first be obtained from the State Commissioner of Alcoholic Beverage Control; and

It is further ORDERED, that Employment Permit No. 4048, heretofore issued to Theodore Trinkella by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately. Leave is hereby given to said Theodore Trinkella to apply to me for an opportunity to be heard on the charges herein and for a reinstatement of his Employment Permit upon presentation of satisfactory justification for his failure to appear in answer thereto; and

It is further ORDERED, that Employment Permit No. 6835, heretofore issued to Alfred B. Cuneo by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately. Leave is hereby given to said Alfred B. Cuneo to apply to me for an opportunity to be heard on the charges herein and for a reinstatement of his Employment Permit upon presentation of satisfactory justification for his failure to appear in answer thereto.

ALFRED E. DRISCOLL,  
Commissioner.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 953

JANUARY 19, 1953.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 953

JANUARY 19, 1953.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR IMMORAL PURPOSES), (OBSCENE CONDUCT BY ENTERTAINER) - FEMALE IMPERSONATOR - HOSTESSES - EMPLOYMENT OF UNQUALIFIED PERSONS (NON-RESIDENTS AND PERSON CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE) - LOTTERY - SALE OF ALCOHOLIC BEVERAGES BEYOND TERMS OF LICENSE - BOTTLING ALCOHOLIC BEVERAGE - LICENSE REVOKED.

In the Matter of Disciplinary  
Proceedings against

MRS. MARGARET GARAVENTI  
212 River Street  
Hoboken, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-76 for the 1951-1952)  
licensing year (and C-74 for the  
1952-1953 licensing year), issued  
by the Board of Commissioners of  
the City of Hoboken.

Maurice M. Krivit, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On November 30, 1951, and on divers dates prior thereto, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On November 16, 17, 21 and 30, 1951, and on divers other dates, you allowed, permitted and suffered a female impersonator, called 'Joe ...', in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"3. On November 16, 17, 21 and 30, 1951, and on divers other dates, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that you allowed, permitted and suffered the above-named person called 'Joe ...' to perform for the entertainment of your patrons in a lewd, indecent and immoral manner and to engage in foul, filthy and obscene conduct; in violation of Rule 5 of State Regulations No. 20.

"4. On all the occasions aforesaid, you allowed, permitted and suffered Mildred Butler, Norma Maccagnano, Mary Del Geno, Margaret De Mesky, and Elsie Sherman, females employed on your licensed premises, to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20.

"5. On all the occasions aforesaid, you knowingly employed on your licensed premises Elsie Sherman and Kay Dare, non-residents of New Jersey who had not obtained any requisite employment permits from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 4 of State Regulations No. 13.

"6. On November 30, 1951, and on divers dates prior thereto, you allowed, permitted and suffered a lottery, commonly known as a 'raffle' or 'drawing', to be conducted in and upon your licensed premises, and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"7. On November 30, 1951, you sold an alcoholic beverage, not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1) in that you made a sale of whiskey for consumption off the licensed premises in other than the original container; in violation of R.S. 33:1-2.

"8. On November 30, 1951, you, not being the holder of any license so to do, bottled an alcoholic beverage for the purpose of sale, viz., whiskey in a 7-ounce soft drink bottle labeled '7-Up'; in violation of R. S. 33:1-78.

"9. On November 30, 1951 and on divers dates prior thereto, you knowingly employed and had connected with you in a business capacity Lawrence Garaventi, a person who had been convicted of crimes involving moral turpitude, viz., in or about April 1922 of the crime of robbery and in or about April 1936 of the crime of unlawful operation of a still; in violation of Rule 1 of State Regulations No. 13."

(Hearing of this case took three full days, the third day two months after the first, with 377 pages of transcribed testimony and argument. Although defendant-licensee entered a plea of not guilty to all nine charges a Memorandum filed for defendant-licensee on May 1, 1952 sets forth that with respect to Charges 6 and 7: "The licensee ... enters a plea of non vult.")

Four of the Division's agents participated in the investigations leading to the proceedings herein. In the testimony and comment hereinafter set forth the full names of the agents will not be used but, instead, just the initial letter of the last name: "W", "K", "M" and "P".

#### F O R     T H E     D I V I S I O N

##### The night of November 16th (Investigator "W" testifying).

Waitresses Norma Maccagnano and Mildred Butler and Mary Del Geno (hat check girl) accepted and drank "several rounds" of alcoholic beverage drinks at the expense of male patrons. Later Norma and Mildred had several drinks at the expense of Investigators "W" and "K".

— — "W" and "K" asked Hank (Frank Brignola) the night bartender whether it would be possible to get rooms in the hotel upstairs. They told him that they had "a couple of girl friends" they would like to take up to the rooms for the purpose of engaging in sexual intercourse. Hank said "You can get the rooms here ... there won't be any trouble"; told them they would not need luggage; and told them the rooms would cost three dollars apiece.

— — Later "Joe", who had been meeting people coming in and ushering them to the bar or tables, went to the band platform. "He started to sing ... During his song (Heart of My Heart) he sang in a high-pitched voice, and he put his hands on his hips and swished his hips

back and forth as a woman would do, and also moved his hands about in effeminate fashion. Several times during the song he would say 'Whoops', and jump forward and put one of his hands to his posterior as though he had been goosed ... During the act, during his song, he had a handkerchief in his hand and he rolled it up to a point ... in a long form, elongated form ... He held it in one hand and bent down as though to lick it, and when he bent down to lick it he would work it so that the handkerchief would fall over ... After the song was finished he put the handkerchief on his head like a turban and went down amongst the patrons and he was taking money from the male patrons in front of them on the bar, money in front of them. One time we observed him kiss one of the male patrons right on the forehead after getting money." Then "he came long the bar to where Investigator 'K' and I were standing and took a dollar bill from Investigator 'K' and a dollar bill from myself from the money we had, and he was swishing as he came down ... moving his hips as a woman would. After he grabbed the money he returned over and grabbed Investigator 'K' at his groin, his private parts, and said 'Oh what beautiful blue eyes you have'." Norma Maccagnano and Mildred Butler were with the two agents at the time when this occurred; "they giggled and said they didn't have to worry about 'Joe' because he is a queer."

The night of November 17th (Investigator "W" testifying).

Investigators "W" and "K" spoke to Hank (Frank Brignola) about getting rooms upstairs to which to take a couple of girls for the purpose of having sexual intercourse. "Hank told us he couldn't get us rooms. He said we would have to see Babe (Lawrence Garaventi); he took charge of the rooms and he is the only one who knew which were vacant and available." Hank said Babe was out and would be back later.

— — Again the agents observed "Joe" walking about the premises "in a very dainty fashion, swishing his hips as he went up and down the barroom" and speaking "in a very effeminate manner." Again "Joe" sang in a falsetto voice. He also swished his hips and "pretended he had been goosed ... and toward the end of the song he again performed the routine of folding up the handkerchief in an elongated form and pretended to lick it and have the handkerchief fall down as he bent forward with his tongue ... After he got through the performance he went down amongst the male patrons and again solicited them for money they had on the bar."

The night of November 21st (Investigator "W" testifying).

Hank was tending bar. Norma Maccagnano and Mildred Butler, standing at the bar, consumed several rounds of drinks at the expense of male patrons. "The men would take turns buying the drinks."

— — Investigator "W" again spoke to Hank about getting rooms upstairs to use for the purpose of sexual intercourse with a couple of girls he and "K" had lined up. Lawrence Garaventi was on the premises. "He would greet customers coming in and show them places at the bar and also would show them places at the tables or booths." Hank introduced the agents to Lawrence Garaventi who said "Well, I can get you rooms because we always have a couple of rooms set aside for friends." Investigator "W" told Lawrence Garaventi that he and "K" had a couple of girls lined up to take upstairs and that they didn't want to get in any trouble, and Lawrence Garaventi then told the agents he would get rooms for them any time they wanted.

— — Again "Joe" sang "in a high falsetto voice and moving his hips and arms about in an effeminate manner", and later walked about the



premises "swishing and walking daintily as he went up and down talking to the patrons."

The night of November 30th (Investigator "W" testifying).

Hank was tending bar. "Joe" was on the bandstand, singing. Lawrence Garaventi was sitting in a booth with a man and a woman. "From time to time Babe (Lawrence Garaventi) would get up when people came in, while 'Joe' was singing, and escort people to the bar or tables in the premises." Investigator "W" called Babe over and told him that he and "K" had lined up a couple of girls who were coming down later by cab. "I told him 'K' would make a 'phone call and they (the girls) would come down and see about coming up to the rooms." The investigator told Babe that the girls' names were Terry and Joe. Babe told "W" the rooms were three dollars a couple. "I told him we wanted rooms shortly. He said 'Let me know when you want them'."

— — Investigator "W" asked Babe about selling a pint of liquor to take upstairs. Babe said "I can't give you a pint but I'll give you a soda bottle full of whiskey", and then Babe walked to the center of the bar and talked to Hank.

— — While Babe was speaking to Hank, Investigator "W" observed Margaret De Mesky and Norma Maccagnano, seated at a table with four male patrons and drinking at the expense of those patrons. Mildred Butler served the drinks and the payments were made to Mildred by the men seated at the table. Mary Del Geno accepted and consumed a drink at the bar at the expense of a male patron. Elsie Sherman (one of the musicians) accepted and consumed a drink at the bar at the expense of a male patron.

— — "Joe" came by and said he was "selling chances on cuff links, a lighter, tie clasp and set, buckle set." He sold two chances to "W" and two to "K" at two chances for a quarter.

— — "After Babe spoke to Hank, Hank took a bottle of Seagram's 7 Crown whiskey from the back bar and took also a 7-Up bottle and filled the bottle with whiskey from the Seagram's 7 Crown. After filling it up he brought it down around to the bar and put a cap on it, hit the cap on top of the bar and set the bottle in front of Investigator 'K'. 'K' asked him how much it would cost and he said 'two dollars. That is what Babe told me to charge you'."

— — Investigator "W" testified that "Babe returned to us. I told him I would like to get the rooms now because the girls were going to join us and 'K' would make a telephone call. Again I asked how much the rooms would cost. He said 'three dollars'. We each gave him the marked three dollars that we had ... He put the money in his pocket and called over 'Joe' and spoke something to him and 'Joe' went over to the side of the bar and lifted the latch on the door which led into the hallway and went out. Shortly after he returned and spoke to Babe ... Babe said 'I hope the girls are o.k. because if they talk there might be trouble'." Babe went to the men's room and when he returned "W" asked him whether they could have glasses to take to the hotel rooms. Babe said "take the shot glasses and other glasses that you have and use them in the room ... I'll take you up to the rooms now." Investigator "K" took the 7-Up bottle filled with whiskey; "W" took the glasses; and the two investigators followed Babe out of the tavern door where Babe unlocked the hotel door, told them the rooms were in front on the third floor, Rooms 14 and 15, and said "Right at the top of the stairs ... when the girls come I'll send them up." "W" and "K" went up together; put on the lights in Rooms 14 and 15 and found the rooms empty, and then went to Room 14 and stayed there waiting. About five minutes later Investigators "M" and "P",

together with Babe, entered Room 14. Investigator "M" asked Babe to empty his pockets and included in the money removed therefrom were the six marked one-dollar bills made up prior to the agents' entering the premises. Shortly thereafter four members of the Hoboken Police Department (two detectives and two uniformed policemen) joined the others in Room 14. A little while later Investigator "K" and all of the police went down to the barroom and Investigator "K" seized the drinks from Norma and Margaret at the table at which they were seated."

(The six marked one-dollar bills; the 7-Up bottle containing whiskey; two bottles into which the drinks seized from Norma and Margaret had been poured; and the chance book, belt set and lighter seized from "Joe" were introduced and marked in evidence herein.)

The parties concerned were taken to police headquarters: Norma Maccagnano, Mildred Butler, Margaret De Mesky, Frank Brignola, "Joe", and Lawrence Garaventi. There Investigator "W" took sworn statements from Norma and Mildred and Frank. The statements were introduced and marked in evidence herein.

Investigator "K" testified that his testimony on direct examination would, if taken, be substantially the same as that given on direct examination by Investigator "W". Investigator "P" testified that he was present on the licensed premises on the nights of November 17th, 21st and 30th, 1951; that he observed the entertainment and conduct by "Joe" on November 17th and 21st and the acceptance of drinks, at the expense of customers, by Norma and Mildred on November 17th; that on November 30th he heard the conversation between Investigators "W" and "K" and Frank Brignola and a portion of the agents' conversation with Lawrence Garaventi (with respect to the price of the rooms but not with respect to the mention of "girls"); and that as to the indicated matters his testimony would be substantially the same as that of Investigator "W".

Investigator "M" testified that he was present at the licensed premises on the night of November 30, 1951; that he entered with Investigator "P"; that he and "P" stood next to Investigators "W" and "K" at the bar; that Frank Brignola was bartending; that he observed "Joe" sell the chances to "W" and "K" and observed Elsie Sherman accept a drink at the expense of a male patron. He testified to the same effect as Investigator "W" with respect to the conversation between "W" and "K" and Lawrence Garaventi regarding obtaining of rooms, price of the rooms, sale of the whiskey in the soft drink bottle, and Babe's telling the agents to take their glasses upstairs. He testified, further, that when Babe returned to the tavern, after having directed "W" and "K" to the rooms upstairs, he ("M") revealed his identity and asked Babe to escort him to the rooms he had rented to the two agents; that Babe did so and the agents were found in Room 14; and that he there took from Babe the six one-dollar bills which had been given to him by "W" and "K" and which he ("M") had marked beforehand.

Introduced and marked in evidence herein were copies of four letters, textually as follows:

From the Division to Lawrence Garaventi (February 3, 1949):

"Please be advised that the record furnished us by The State Bureau of Identification, at your request, through our Identification Bureau, discloses that you have been convicted of at least two crimes which in the opinion of the Director are crimes involving moral turpitude; that is robbery in 1922 and operating an illegal still in 1936. Those crimes both involve moral turpitude...."

From the Division to Mrs. Margaret Garaventi (February 4, 1949):

"Enclosed is copy of letter dated February 3, 1949, which was sent to your husband.

"You will note from the enclosed letter that, because of your husband's convictions, he may not be employed by you or connected in any business capacity with your licensed premises."

From the Division to Mrs. Garaventi (September 26, 1950 - Registered Mail):

"By letters of February 3 and 4, 1949, respectively, your husband, Lawrence Garaventi, and you were advised that in the opinion of the Director your husband is disqualified from holding a liquor license or being employed by a liquor licensee in this State. The reason for the disqualification, as previously pointed out, is that he was convicted in or about April 1922 and in or about April 1936, respectively, of crimes involving moral turpitude, viz., the crime of robbery and the crime of unlawful operation of a still. Nevertheless, it appears from reports of Division investigation that on August 7, 1950 one of our agents found him tending bar at your premises. It further appears from a sworn statement given by him to the agent on that date that he had been cleaning your tavern since your regular porter left to join the Navy several days before the investigation.

"We note that, although you admitted having been apprised by this Division of your husband's disqualification, you claimed in sworn statements that you were away on vacation during the period that the employment occurred and that such employment was not only without your knowledge but also contrary to your specific instructions to him. You added that you had left the premises in charge of a bartender, Marco Sisti, and that he was unaware of your husband's criminal record. Your claim of lack of knowledge of your husband's employment is corroborated by his statement and your claim concerning your bartender's ignorance of your husband's criminal record is corroborated by a sworn statement of the bartender.

"Since employment of a disqualified person is contrary to the Alcoholic Beverage Law and the Division Regulations (R. S. 33:1-25 and 26 and Rule 1 of State Regulations No. 13) and, hence, cause for suspension or revocation of your license, serious consideration has been given to the question whether disciplinary proceedings should be instituted against you. However, under all the circumstances and in view of the fact that you have no previous record of a similar violation, it has been determined to accept your above mentioned claims and, accordingly, we will withhold proceedings this time. On the other hand, you are given fair warning that if, during the period of your husband's disqualification, his services are again utilized in any way on your licensed premises or in furtherance of your licensed business, with or without compensation, disciplinary proceedings may be instituted against you and the present warning considered an aggravating circumstance in determining the proper penalty to be imposed.

"It is your responsibility to see that no unqualified persons are employed at your premises or in connection with your business. You may not avoid that responsibility merely

by entrusting the operation of the business to an employee. Accordingly, you would be well advised in the future, when leaving someone else in charge of your premises, to give him appropriate instructions against engaging or accepting the services of your husband or any other disqualified person.

"You must let us have, immediately and without fail, a letter signed personally by you, acknowledging receipt of this letter and pledging strict future compliance with the above cited Law and Regulations."

From Mrs. Margaret Garaventi to the Division (September 30, 1950 -- Registered Mail):

"Received your letter of Sept. 26, 1950 and in accordance to my orders my husband is not permitted at any time to go behind the bar or to be employed on the premises, which I have always fulfilled.

"I am very sorry it had to happen that way."

#### TESTIFYING IN BEHALF OF DEFENDANT-LICENSEE

Mrs. Margaret Garaventi. She has been married for twenty-two years to Lawrence Garaventi who "used to fight under the name of Babe Sieger when he was younger." She has held the license for the Sportsmen's Bar and Grill for almost four years. She owns the building with the licensed tavern on the ground floor and with the two upper stories a 15-room "hotel for men". She has seen no women in the hotel since 1950. She conducts a restaurant on the tavern premises and has a "restaurant license" issued by the City of Hoboken. Her husband, Lawrence Garaventi, is in charge of the hotel and there is no connection between the hotel and the licensed premises. She goes to the licensed premises "practically every day ... sometimes I go in the afternoon; sometimes I go in the evening." The "capacity" of the waitresses employed by her was to serve drinks. "That was what they were working there for." She instructed the waitresses not to drink with patrons of the tavern. "I always tell them they should never; never drink with any patrons, never whatsoever." She paid the girls three dollars a night and "most naturally" they got tips in addition to their salary. She never saw any of the waitresses drink with any patrons, but she did not know whether or not any relatives of the waitresses came to the tavern. She never allowed, permitted or suffered any lewdness or immoral activity upon the licensed premises: "Never, Mr. Krivit, never." Asked whether she permitted or knew of the renting of rooms in her hotel for the purpose of illicit sexual intercourse, she replied: "No, I didn't know that." "Joe" is her genial host: "A genial host is that he sits patrons when they come in, and he is pleasant, takes care of them, makes sure they have a place to sit." She saw "Joe" perform on the nights of November 16th, 17th and 21st, 1951. "He sings some songs ... good songs, no bad ones. Like Easter Parade, something to that effect .... Well, I mean a few little songs there. Just didn't do it as far as any bad songs are concerned." Asked to describe actually what she saw "Joe" do in the performance of Easter Parade, she answered: "Well, he would sing around, swing a little, sway a little, Easter Bonnet, he had a bonnet and put it on, tie it around his neck." "Joe" was not a female impersonator: "Oh, no. He is far from that. He certainly is not." When her Attorney asked "How often do the police of Hoboken come in?", she replied: "Fifty percent of the police of Hoboken come into my place, and come in with their wives, Mr. Krivit ... Positively. I have a policeman

lives right on my block who I know very well." Then defendant-licensee was asked by her Attorney whether "Joe" ever engaged in "foul, filthy and obscene conduct", and she answered: "No, sir. I never heard him, never." Again the Attorney asked whether she ever permitted or suffered the waitresses to accept drinks at the expense of customers or patrons. She replied: "Never. I told you that before, Mr. Krivit. I told my girls every night, or every time I seen them -- I can't say every night -- but I always told them never, never drink with any of the patrons, never." Mrs. Garaventi testified that she employed Elsie Sherman and Kay Dare to work as musicians on the licensed premises; that November 30th, 1951 was their first night; and that she did not know they were non-residents of New Jersey and did not know of any rule requiring a permit for the girls. She did not know "Joe" was conducting a raffle on the licensed premises: "If he done that he did it on his own. I didn't know anything at all about it." Her husband, Lawrence Garaventi, "has no connection whatsoever with my tavern." When her Attorney asked whether her husband was ever connected with her in a business capacity, Mrs. Garaventi replied: "None whatsoever in the tavern. I was fully aware my husband could never go behind the bar and never have any license. I was fully aware of that Mr. Krivit. Why should I jeopardize my license to have my husband go behind the bar or do anything in the tavern?"

Mildred Butler. She has been employed as a waitress on the licensed premises for a little over a year and was working there on the nights of November 16th, 17th, 21st and 30th, 1951. The tavern "is operated very good manner or I wouldn't be there ... It is a clean place, run respectable. Mrs. Garaventi, the owner of it, is respectable." Members of the Hoboken Police Department come there with their wives "just to patronize, pleasure." She had never seen any lewdness or immorality in or upon the licensed premises: "Never, or I wouldn't be there." She saw "Joe" perform on the nights of November 16th, 17th, 21st and 30th, 1951, and he never did, in her presence, any act of a lewd or indecent nature. "Almost all" of the members of her family come to the tavern. "My mother has been there; my two brothers; my sister; my brother-in-law have been there." Investigator "W" asked her to have a drink, but "No, I wouldn't drink. I didn't have any drink ... because we don't drink with patrons ... because I got strict orders from Mrs. Garaventi not to drink with patrons." She did drink with some persons who came in: "My brothers; my mother when she came in; my aunt; the fellow I go with; my brother-in-law -- all in the family"; but she never took a drink with any stranger. She served drinks (on November 30th) at a table where Margaret De Mesky's mother-in-law and father-in-law sat.

Margaret De Mesky. She is the wife of a Jersey City Fireman. They have two children, one six years old and one one year old. She has worked as a waitress for defendant-licensee for one year, on Friday, Saturday and Sunday nights from nine until two. She never saw any act of lewdness or immoral activity in the tavern. She never accepted any alcoholic beverages at the expense of customers or patrons, but only at the expense of relatives. "My mother-in-law and father-in-law comes into the place very often; in fact, make it a practice to come in there always to see me. We sat down with a friend of theirs, relatives of my mother-in-law, we had a drink." The friend was Morris Kelly, "distantly related." Her brothers came to the tavern and "I drank with them", and her husband's relatives also came to the tavern often -- "Uncles." She had never seen any of the waitresses drink in the tavern with any patrons. She had never known Investigator "K" until the night of November 30th when he took her statement: "When he had mentioned his name, and I remembered his brother and I went to the same school together. I know the family."

Norma Maccagnano. She had been working as a waitress in defendant-licensee's tavern for about seven months. The place was "operated very nicely." Lawrence Garaventi never participated in any way in running the tavern. When she first went to work Mrs. Garaventi "told me never to drink with customers ... I drank with like Margie's relatives; they weren't relatives of mine but friends, friends I mean." On one occasion she had a drink with Investigators "W" and "K". "They said 'have a drink' ... I said 'no' first ... They said 'come on, have a drink' ... so I said 'all right'; but when Frank Brignola served the drink he did not know it was for her. "I have a brother-in-law and sister-in-law come in -- occasionally they come in and buy me a drink", but she never drank with "so-called strangers." She had never seen "Joe" perform in a lewd or indecent manner or impersonate a female.

Loretta T. Daly. This witness identified Investigator "K" at the Hearing. She testified that she had known him for four or five years; that he called her Loretta and knew her last name and that she knew him only as "Skippy"; and that she had been with him at defendant-licensee's tavern "in the fall of 1950." Immediately defendant-licensee's Attorney asked: "You say it was 1950, this being 1952. Have you refreshed your recollection since you have testified? She answered: "I forgot this was 1952, to be truthful; that is when I went -- I have been in the hospital." Her recollection was that she had seen "K" at the tavern in 1951 (some months before the investigation herein) when "I met him there and he sent me a drink"; and that she had met him on a different day in 1951 at the Grove Tavern in Jersey City. She testified that she had known "K" and had known he was an ABC agent for about four years before she met him at the Grove Tavern: "He told me in Bosco's restaurant on First Street (Jersey City) when I first met him four years ago, when he told me he became an ABC man." Then the Attorney for defendant-licensee asked: "After you met him in the Grove Tavern did he make any arrangements to go anywhere with you?", and Loretta Daly answered: "If I may state it in my own words, I was sitting in the Grove Tavern. I was having a beer. So Skippy came in, and he says to me, 'What's doing?' I says, 'I'm sitting around.' He says, 'Want to go for a ride?' I says, 'All right.' He says, 'But we aren't going to Union City. I have to go to Hoboken.' We didn't only go to the Sportsman Tavern, we went to another place -- two other places. As Skippy was driving we came down River Street to the Sportsman Club and Skippy showed me a tavern and said, 'I had that place closed up, too' -- meaning the Irish House or Dublin or Shamrock House in Hoboken. I know it was on a Monday night because it was very slow all around. Tuesday, the bartender in the Sportsman Club is off, but Mr. C. ('Joe') was there and another bartender was there. I only know him by name. I told him how Skippy was an ABC man ... And Wednesday night (the following night) I went down there again and I told Hank (Frank Brignola)." The Attorney for defendant-licensee asked Loretta Daly whether she had seen "K" since, and she answered, "No." Then, Question: "This (at the Hearing) is the first time?" Answer: "I have been very sick, as I said before. Why I said 1950 is because I lost my brother then. It has been on my mind." Question: "Any question in your mind that this is not the man you referred to as Skippy?" Answer: "Oh no, no doubt whatsoever." On cross-examination Loretta Daly testified that she first met Investigator "K" at a New Year's party in Bosco's restaurant on January 1, 1947. When asked, on further cross-examination, "Can you tell us the circumstances under which you brought to the attention of the Garaventis or Mr. Krivit the fact that you knew Mr. 'K'?", she answered: "Well no. I read a piece in the paper about the Sportsman Club. Naturally, I called up, wanted to know what it was all about. Mrs. Garaventi says to me, 'Were you ever in the Sportsman Club with Skippy?' -- because Skippy said he doesn't know you." I told her, 'Yes, I was in



there.' That was the whole story." Then Loretta Daly denied that she had ever "worked" for defendant-licensee, but admitted: "I helped out for one week -- weekend, it was ... in 1950" as a hat-check girl.

"Joe". He is fifty-nine years old; married and "wife lives with me all those thirty-seven years." He testified that he had been employed for almost two years as "entertainer" and "genial host" at defendant-licensee's premises. As genial host, "I greet people coming in, good evening them and good night them, sit them down at the bar or a table where they prefer to sit, see that everybody coming in the doorway is not under age, don't get served, intoxicated don't get served; that is my job." Asked by defendant-licensee's Attorney, "Do you ever see any police officials come into the place?", he answered: "Oh, yes. Every night." He testified that he "sings songs, sing a hundred different songs ... all popular tunes"; that he never did anything of a vulgar or indecent nature while he sang. "Never did in my life. I am in this business forty years." "Joe" was asked by the Attorney for defendant-licensee: "... is there any one who made any particular song famous that you impersonate? Like Helen Morgan?" He replied: "Certainly, I impersonate a lot of stars." He testified that he used a handkerchief during his performance. "Simply wave it when I sing a song like Easter Parade." Then, Question: "Did you ever roll this handkerchief to an elongated roll and put the handkerchief in your mouth?" Answer: "No. I do like You Got Me Crying Again, and when it comes to the part 'Your lips are sweeter ... Your kisses right from the start come from your lips' -- that is all." Question: "Then you take the end of the handkerchief?" Answer: "That is right." Question: "Which is opened out?" Answer: "That is right. Just like Helen Morgan." Question: "Put it to your lips?" Answer: "That is right. Just like Helen Morgan." Question: "Was she made famous?" Answer: "That is right. Sits on a table. That is all she does. With a handkerchief." Question: "She used to hold the handkerchief in her hand?" Answer: "That is right. That is what made her song." Question: "Have you ever swished your hips or did bumps or grinds in any way?" Answer: "No, but I do songs with gestures like in." Question: "Gestures?" Answer: "Certainly." Question: "What kind of gestures do you use?" Answer: "According to the song I sing. Like, 'right from the start, come from your lips' all them bars with gestures." "Joe" testified that Mrs. Margaret Garaventi "comes in nearly every night .... Her hours wasn't every night the same; probably stood an hour, half-hour." Asked whether he ever saw any relatives of the waitresses come into the tavern, "Joe" replied: "Yes, quite often. In fact, I know their mothers. Their mothers used to come in there quite often .... Millie's mother came in there with her aunt; Norma's mother came in, and Margie's mother-in-law." He testified that he saw Margie and Norma seated with Margie's mother-in-law and father-in-law on a night during Thanksgiving week in 1951. He testified that Lawrence Garaventi came to the tavern "occasionally, I would say twice a week, sometimes not at all", and that Lawrence Garaventi never had anything to do with the running of the tavern.

Frank Brignola (Hank). This witness testified that he had worked at defendant-licensee's tavern for two and one-half years as night bartender and night manager. Then, on further direct examination -- Question: "Do you see Mrs. Garaventi very often or did you?" Answer: "Who?" Question: "Did you see Mrs. Garaventi very often?" Answer: "I don't see him at all." Question: "Mrs. Garaventi." Answer: "Yes." Question: "How often do you see her? At that time, before November 1951, how often did you see her?" Answer: "Never." Question: "Before November 1951." Answer: "Pretty regular -- five or six nights a week." Then Frank Brignola testified that he did not see "Joe" put on a lewd or indecent act on November 16th, 17th, 21st or 30th, 1951, or at any other time. The Attorney for defendant-licensee then asked him, "Who is in charge of renting rooms upstairs?", and he answered: "I guess Lawrence, Babe Garaventi." Question: "Has

he any connection whatsoever with the tavern? Answer: "None whatsoever." Asked whether he knew Investigator "K" Frank Brignola testified: "I met him once. I seen him in the tavern. I wasn't introduced to him." He was with "Loretta Daly ... Loretta Daly told me that same night when he was there. When he went to the gent's room she said he was an Investigator for the ABC", and, therefore, that when Investigator "K" entered the premises (with Investigator "W") on the night of November 16, 1951, he knew "K" was an ABC man. Frank Brignola testified, further, that on November 16th Investigator "W" approached him on the subject of getting rooms: "He said, 'How about getting a room here?' I said, 'No rooms available, besides the hotel has nothing to do with the bar.' That is all I said." Asked whether "W" had indicated to him that he wanted rooms for sexual intercourse, Frank Brignola answered: "No such talk ... no talk about it. He just inquired if he can get a room ... I told him 'No connection between the hotel and bar.' I said, 'You have to see Babe'." Then defendant-licensee's Attorney asked (with respect to the night of November 30th): "Did they ever say to you that they wanted some rooms a couple of hours to get laid?" Answer: "That is a lie; never mentioned such talk like that. We wouldn't stand for it." This witness testified that on the night of November 30th Investigator "W" asked him to pour whiskey into a 7-Up bottle. "He asked me for a pint first. I said we don't sell pints, just quarts. He said, 'Put some in a 7-Up bottle.' I hesitated a while. I knew who they were. There was nothing to fear. I took a chance and put it in a 7-Up bottle. I didn't think it was a violation because a violation is putting whiskey in a whiskey bottle but not a 7-Up bottle. Like a glass or container." Then Question: "Did you ever give these men the price of the rooms?" Answer: "No, never discussed price."

Lawrence Garaventi. Defendant-licensee's husband testified that he had taken care of the hotel above the licensed premises since 1949 but that he had no connection with the licensed premises; that theretofore he had worked as a longshoreman until "I hurt my back ... laid up about eighteen months"; that he went into the licensed premises "Not too often, maybe once a week, twice every two weeks"; and that he never gave any orders or participated in any way in the running of the licensed premises, never hired or discharged anyone there, never went behind the bar, and never dispensed any liquor. Then, Question: "Did you at any time between November 16 and November 30 or at any other time employ the licensed premises for the purpose of arranging immoral acts in connection with the hotel?" Answer: "No, sir." Lawrence Garaventi then testified that he had never seen any of the Division's agents until the night of November 30, 1951, and that when Investigator "W" spoke to him on that night he was sitting in a booth talking with a "Mr. and Mrs. Riorden" who were back from a honeymoon in California. Asked about his conversation with Investigator "W" he testified: "Well, he said to me, he said 'I am tired', he says, 'I want to go up and rest a while, take a shower ... I says 'all right' ... He said 'I want to get a room for myself and friend', and he pointed to 'K'. 'We are very tired, want to take a shower and go to sleep for a while ... I called 'Joe' over and I told 'Joe' to go up and see if the porter was there." He testified that "Joe" went up "through the tavern, moved tables and chairs", that "Joe" told him he didn't want to go outside because he "was sick, laid up with a cold." "Joe" came downstairs through the same door, locking it and putting the tables and chairs back, and told Lawrence Garaventi that the porter wasn't there; whereupon he (Garaventi) said to the Investigators, "All right, I'll take you up to the rooms.... They says, 'All right.' As we were walking out of the tavern ... while we were in the lobby there going out of the tavern to go to the hotel entrance, that is when they handed me the money for the rooms." Then, Question: "Was there any other talk?" Answer: "No, not at that time. When we



left I took them up to the hotel. That is when Mr. 'W' approached me. He said, 'Look, I expect my wife', he says, 'and my friend expects his girl friend.' He says, 'Can you send them up when they come in?' I said, 'I'm sorry; when they come in if they ask for you I'll call you downstairs.' Then, Question: "Have you ever made arrangements at any time -- whether on the 16th, 17th, 20th, 21st or 30th, or any other time with anybody, ABC men or anybody else, for the use of the rooms upstairs for immoral purposes?" Answer: "Look, Mr. Krivit, the way those fellows 'pitch' in that place, I wouldn't spit on anything like that. I wouldn't stand for anything like that. I made mistakes when I was a kid, but something like that I wouldn't stand for." Question: "Where is the register kept in the daytime?" Answer: "Upstairs in the linen room. There used to be an office there, but there was some new State law, fire violation. We had to eliminate four rooms in the place. That is where the book was. We had to eliminate that to make up a fire exit." Question: "The register is kept downstairs?" Answer: "Right." Later, the question: "Police officers come in the Sportsman Bar and Grill?", and the answer: "Yes, sir."

Called in rebuttal, Investigator "W" testified as follows:

Mildred Butler did not decline to drink with him on the night of November 16th, but had several drinks with him and "K". On the night of November 30th no other female was seated with Margaret De Mesky and Norma Maccagnano, but four young men were seated with them on that occasion. He ("W") witnessed the taking of Margaret De Mesky's sworn statement by "K" on November 30th and she did not say that the people seated with her were relatives. Called in rebuttal, Investigator "K" testified as follows: On the night of November 16th Mildred Butler did not decline to drink but, instead, had several drinks with him and "W". On the night of November 30th no other females were seated with Margaret De Mesky and Norma Maccagnano but, instead, four young men were seated with them. He ("K") took Margaret De Mesky's sworn statement on the night of November 30th and she did not say that the persons sitting with her were relatives or members of her family.

Further rebuttal testimony by Investigator "K": Question: "Did you see in court this morning a lady who gave her name as Loretta Daly and said she lived at 77 Railroad Avenue, Jersey City? Were you here this morning?" Answer: "Yes, Sir." Question: "Did you see her on the stand?" Answer: "Yes, sir." Question: "Do you see that young lady in the Hearing room now?" Answer: "Yes, sir." Question: "Have you ever seen that lady prior to today?" Answer: "No, sir." Question: "Were you an agent of this Division on January 1, 1947?" Answer: "No, sir." Question: "Or on January 1, 1948?" Answer: "No, sir." Question: "When did you become an agent of the Division of ABC?" Answer: "May 22, 1950." Question: "How old are you Mr. 'K'?" Answer: "I am twenty-five years of age." Question: "Did you as testified by Loretta Daly meet her about five years ago in Bosco's restaurant in Jersey City?" Answer: "No, sir." Question: "Have you ever been in the Sportsman Club in the company of Loretta Daly?" Answer: "No, sir." Question: "Mr. 'K', how old were you when Miss Loretta T. Daly states that she first met you approximately five years ago?" Answer: "I would be twenty years old." Question: "At that time, did you frequent any taverns?" Answer: "No, sir."

This case has been a new Director's most unpleasant inheritance. Although unoriginal, the theory and pattern of defense are unique in

the experience and history of the Department (now Division). As will have been observed from the testimony hereinabove recounted, these are proceedings in which the defense alleges that the Division's entire case, in the activities and sworn testimony of four of its agents, was fabricated from beginning to end in frame-up of an innocent licensee upon whose premises none of the charged violations was committed. In attempted support of the defense position in this regard is the contention that defendant-licensee's employees knew that one of the principal agents in the investigations leading to the charges was an ABC man before he and his fellow agent entered the premises on November 16th. The apparent purpose is to show that it would be most unreasonable to expect guilty conduct with such forewarning.

The Memorandum in Behalf of Defendant-Licensee begins as follows:

"The defendant-licensee senses the futility of arguing that where there is a direct denial of the testimony offered by the investigators for the Division of Alcoholic Beverage Control and the licensee's witnesses, that the Director should accept the licensee's version.

"And yet, in evaluating the testimony offered by both sides, can the director say within the realm of reasonable probability that the investigators are truthful and the witnesses for the licensee are not?"

The answer is an emphatic Yes. I am thoroughly convinced that a careful reading of the testimony and evidence herein could lead any dispassionate, discerning person to but one conclusion, namely, that the testimony of the Division's agents truthfully represents the facts while the testimony of the witnesses for defendant-licensee is largely compounded of studied and deliberate falsification.

On cross-examination of Investigators "W" and "K" an effort was made to show that the agents had operated carte blanche and entirely on their own when they visited defendant-licensee's premises, without information or cause to suspect violations therein. The agents truthfully and accurately testified that they acted under supervision and upon specific written information from their superior. As Investigator "W" stated: "I don't know the source of the information because I only get complaints stating certain alleged violations occurring on any premises. I have no way of knowing the source of the information." And, as Investigator "K" stated: "We had information in regards to what to expect but didn't know what would be in there until we went in and observed .... I was sent there to make observations; to make my reports to my superiors and then I would be told how to guide myself accordingly."

On cross-examination of Investigator "M" an attempt was made to show that although "M" had marked the six one-dollar bills which were found later on Lawrence Garaventi, he had not heard the price fixed for the rooms until after the bills were marked. In argument, the Attorney for defendant-licensee stated:

"... This is a very pertinent situation, whether any such conversation (concerning price of the rooms) ever took place at all. It is a very significant fact that six dollars were marked, six one-dollar bills were marked, before any conversation was had with Mr. Garaventi, allegedly, in which a determination was made that the price of the rooms was going to be three dollars apiece, or two times three, six dollars.

"I say it is a matter for the determination of the Hearer with respect to whether or not the investigators are telling the truth. It must be a real coincidence, if the Hearer please, that six dollars was marked before any arrangement was made with respect to price, because certainly these men didn't know whether there was going to be a six-dollar charge, eight-dollar charge, ten-dollar charge, or twenty-dollar charge. By a strange coincidence they had exactly the right amount of money marked out prior to the time they go in and supposedly hire rooms from Mr. Garaventi."

The Attorney must have been confused for the explanation was readily at hand. There was no strange coincidence. Investigators "W" and "K" had been told the price of the rooms by Frank Brignola who testified, on direct examination, that the agents "never discussed price" with him. "W" and "K" then told "M" to mark six one-dollar bills. That is why the six one-dollar bills were marked by "M" before price was mentioned to Lawrence Garaventi.

Lawrence Garaventi testified that he went into the licensed tavern "maybe once a week, twice every two weeks ... wouldn't stay very long, just walk in and walk out." Defendant-licensee testified that she went to the tavern practically every day or night, and on cross-examination: Question: "Did your husband spend more time at the tavern than you did?" Answer: "I wouldn't say that but most likely he did." She testified, further, that Lawrence Garaventi was at the tavern "many times" while she was there, and that at times she would go out and leave him there.

Lawrence Garaventi testified that the hotel register was kept "upstairs in the linen room" in the daytime, but defendant-licensee testified, on cross-examination: "It has always been behind the bar."

On cross-examination Lawrence Garaventi testified that his duties in connection with the hotel "was to clean the place up; do work around the place, like plumbing and so on and so forth", but defendant-licensee testified, on cross-examination: Question: "He didn't do cleaning?" Answer: "Oh, no. I had a porter." Question: "Or repair work?" Answer: "No." And Lawrence Garaventi is the witness who testified, "I made mistakes when I was a kid, but something like that (talk of renting rooms for immoral purposes) I wouldn't stand for." In 1936 when Lawrence Garaventi was convicted of unlawful operation of a still he was over 35 years of age.

From Mildred Butler's signed and sworn statement (taken on November 30, 1951 by Investigator "W" with Investigator "K" witnessing): Question: "Do you drink with male patrons at their expense?" Answer: "Not unless I know them." Question: "Do you recall drinking sloe gin and ginger ale with four male patrons and in the company of Norma Maccagnano on Wed., November 21, 1951, at the expense of the patrons?" Answer: "It probably was. I don't remember it." ... Question: "Did you drink with male patrons on this date, November 30, 1951?" Answer: "Yes, I drank with two fellows I knew. I drank scotch and water." And this is the witness who testified at the Hearing herein that she drank only with: "My brothers; my mother when she comes in; my aunt; the fellow I go with; my brother-in-law -- all in the family."

From Norma Maccagnano's signed and sworn statement (taken on November 30, 1951 by Investigator "W" with Investigator "K" witnessing): Question: "Has anyone ever told you not to drink with patrons at their expense?" Answer: "No. Usually I drink with friends." Question: "On the night, Nov. 30, 1951, did you drink with male patrons at their expense?" Answer: "Yes. I knew one and the other was a friend of Margie, a waitress." Question: "What does Babe (Lawrence Garaventi) do on the licensed premises -- as far as you know?" Answer: "He is like a Manager, I guess." This is the

witness who testified at the Hearing herein that Lawrence Garaventi never participated in any way in running the tavern; that she did have one drink with Investigators "W" and "K" but only after they insisted and against specific instructions from Mrs. Garaventi "never to drink with customers"; and that, "I drank with like Margie's relatives; they weren't relatives of mine but friends, friends I mean."

Margaret De Mesky was a remarkable witness. As pointed out, her signed and sworn statement was taken on November 30, 1951 by Investigator "K" (with Investigator "W" witnessing). On redirect examination she stated: "I didn't realize what I was doing when I signed it. I was very upset and didn't know what I was doing ... Mr. Krivit, I don't remember anything when I signed that statement .... Nervous and embarrassed for the simple reason I had in my life never gone through that sort of thing before. I was afraid it would reflect on my reputation as a mother of my children." On recross-examination she testified that she had read the statement before she signed it -- "very hazy, but it was very quickly"; that before she signed it Investigator "K" asked her to raise her right hand and swear that the matters were true; and that she signed without raising any objection, but, "I didn't read it. I couldn't read it. I wasn't even interested in the statement." But on re-redirect examination she was given the numerous questions and answers in the statement, and then she remembered with great clarity that in each instance she had insisted that the only persons she drank with were "relatives" but that Investigator "K" (after considerable discussion with her) had insisted that they were patrons and customers: "I have to write it down this way ... they are still customers."

From Frank Brignola's signed and sworn statement (taken on November 30, 1951 by Investigator "W" with Investigator "K" witnessing): Question: "Do you recall the conversation agents had with you about bringing up girl friends to get laid and that they didn't want to get into trouble with their wives?" Answer: "I told the fellows that as long as you sign the register as Mr. and Mrs., I didn't care what goes on upstairs." ... Question: "Who told you to fill the (7-Up) bottle with whiskey?" Answer: "Babe told me." This is the witness who testified on direct examination at the Hearing herein that the agents had never mentioned to him that they wanted to get rooms for themselves and girl friends for the purpose of sexual intercourse: "That is a lie; never mentioned such talk like that. We wouldn't stand for it." And this is the witness who testified on direct examination at the Hearing herein that Babe had nothing to do with the sale of the 7-Up bottle filled with whiskey.

All of the witnesses for defendant-licensee testified on direct examination (to indicate that everything was run in law-abiding fashion and that no indecencies occurred) that Hoboken policemen and their wives regularly frequented the tavern. As noted, defendant-licensee went so far as to testify: "Fifty percent of the police of Hoboken come into my place, and come in with their wives, Mr. Krivit ... Positively." But no member of the Hoboken Police Department appeared at the Hearing herein. The only Hoboken policemen to put in an appearance in this case were the four who cooperated in assistance of the Division's agents at defendant-licensee's establishment on the night of November 30, 1951.

Loretta Daly was another remarkable witness. She testified that she had been out with Investigator "K" on several occasions; had known he was an ABC man since January 1, 1947; and had tipped off defendant-licensee's employees as to his identity before the investigation in this case began. But Investigator "K", who testified that

he had never seen Loretta Daly until the day of the Hearing, did not join the Division until May 22, 1950. At the close of the Hearing herein the Attorney for defendant-licensee addressed the Hearer as follows: "He (Investigator 'K') has taken the stand and testified directly what this girl testified to is untruthful. In view of that situation we say, because we feel that he is not the one being truthful, we want the opportunity to establish his lack of credibility and the credibility of our witness. We can do it through the people in Bosco's who know whether or not this man engaged in conversation with this woman, which he denies." The Acting Director consented to a continuance with the proviso that the names of any persons to testify in the matter be submitted to the Division in advance of a continued hearing. Not a further word on the subject was received.

On the basis of the full record in the proceedings before me I am convinced that all of the violations were committed as charged herein. The testimony of the Division's agents is revealingly, albeit unintentionally, corroborated by the testimony of defendant-licensee's witnesses and by all of the attendant circumstances in this case.

With specific reference to charges 1 and 9, I am convinced from the evidence that Frank Brignola, defendant-licensee's bartender, was told by the agents that the purpose of renting rooms in the hotel was to engage in illicit sexual intercourse; that Lawrence Garaventi rented the rooms with a clear understanding of such proposed unlawful purpose; that the licensed premises were used adjunctively as the office for the hotel and the renting of rooms therein; and that Lawrence Garaventi was knowingly employed by and connected with defendant-licensee in a business capacity. It is not material that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The offense in Charge 1 was complete when the rooms were rented with knowledge on the part of the licensee's employees that they were, ostensibly, to be used for the illicit purpose. (Re Hartman, Bulletin 904, Item 2). As stated by Judge Jayne in Re Schneider, 12 N. J. Super. 449, 458: "The object manifestly inherent in the rule ... is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

With specific reference to Charges 2 and 3, I am convinced, from the evidence, that "Joe's" entertaining was not legitimate histriionics of a decent and acceptable character but, instead, that "Joe" was a female impersonator in the bad sense as proscribed by Rule 4 of State Regulations No. 20; and that "Joe's" performances were grossly lewd, indecent, immoral, foul, filthy and obscene.

With specific respect to Charge 4, I am convinced, from the evidence, that it was the established policy and practice of the house to have these girls accept beverages at the expense of customers and patrons -- in clear violation of Rule 22 of State Regulations No. 20.

With respect to Charge 5, it is pointed out that, as plainly shown by the testimony, defendant-licensee's tavern was not a "restaurant" within the exception set forth in Rule 4 of State Regulations No. 13. The food service was operated as a minor and marginal concession.

Charges 6, 7 and 8 call for no further comment.

I find defendant-licensee guilty on all the charges. I believe she had very little to do with the operation of the establishment, but she is the licensee of record and a licensee cannot be excused because of non-participation in offenses or lack of personal knowledge thereof. (Rule 31, State Regulations No. 20). See Stein v. Passaic, Bulletin 451; Item 5; Essex Holding Corp. v. Hock, 136 N. J. L. 28; Re Paton, Bulletin 898, Item 3.

The only appropriate and justifiable penalty in this case is revocation.

Although these proceedings were instituted during the 1951-1952 licensing period they do not abate but remain fully effective against the license renewed for 1952-1953. (State Regulations No. 16.)

Accordingly, it is, on this 6th day of January, 1953,

ORDERED that Plenary Retail Consumption License C-74 issued by the Board of Commissioners of the City of Hoboken to Mrs. Margaret Garaventi for premises at 212 River Street, Hoboken, be and the same is hereby revoked, effective immediately.



Dominic A. Cavicchia  
Director.

DIRECTOR DAVIS  
Sent to Regular Mailing List  
STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1045

JANUARY 6, 1955.

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  10. STATE LICENSES - NEW APPLICATION FILED.



6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(INDECENT DANCE, FEMALE IMPERSONATORS) - ALLOWING PREMISES TO BE  
CONDUCTED AS A NUISANCE - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary  
Proceedings against

POLKA CLUB, INC.  
324 Springfield Avenue  
Newark 3, N. J.,

Holder of Plenary Retail Consump-  
tion License C-76, issued by the  
Municipal Board of Alcoholic  
Beverage Control of the City of  
Newark.

CONCLUSIONS  
AND ORDER

-----  
Carl J. Yagoda, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Monday night, September 27 and early Tuesday morning, September 28, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that males and females entertained and performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasion aforesaid you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"3. On the occasion aforesaid, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises and there to congregate and conduct themselves in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that, on the afternoon of September 27, 1954, an ABC agent observed, in the defendant's barroom, a sign advertising a show designated as AUTUMN JAMBOREE to be performed at the licensed premises that night. The bartender told him that it was to be a "faggy" show, adding, "You know, when all the men change into women." He informed the agent that tickets could be purchased at the door for \$1.25.

At 9:30, on the same night, four ABC agents entered defendant's barroom and talked to defendant's president who was tending bar. He also told them that there was to be a "faggy" show in the ballroom (Flamingo Room) of the licensed premises. The agents noticed a number of males wearing mascara, lipstick, rouge and eyebrow make-up and attired in shirts and "slacks" of the type designed for women. Numerous male patrons and three of the waiters were thus "made up" and attired, as were also the male who sold the entertainment tickets and the male who conducted the agents to their seats. The latter two males were known as "Sally" and "Wan," respectively. Some of the other male patrons wore evening gowns. In all, there were at least twenty males in the audience who dressed and acted like females.

The entertainment consisted of numerous singing and dancing "acts" involving more than a dozen entertainers. Three were females. 56



The remainder were males all but one of whom were referred to by female names and wore female attire, many of their costumes being of the type worn by female burlesque artists. Some of the male entertainers wore abbreviated "panties" and "bras."

It is unnecessary to describe in minute detail the various acts performed by the different entertainers. Suffice it to say that many of the performances by the male entertainers who were dressed as females and the dances of several of the female entertainers, which included "bumps and grinds," were lewd and suggestive. The performance of a male and female, ending in simulated intercourse, with the female's legs wrapped around the body of the male, was particularly lewd and vulgar. Nearly all of these "acts" were highly suggestive, designed to inflame the passions of the audience. Such performances will not be tolerated upon licensed premises. Re New Frisco Club & Restaurant, Inc., Bulletin 1040, Item 2; Re Di Angelo, Bulletin 753, Item 4.

Defendant's president made a written statement in which he admitted that he had seen some of the show; that there had been "bumps and grinds"; that some of the male entertainers had dressed and "made up" like females; and that one of the "acts" had ended with simulated sexual intercourse. He claimed, however, that he had seen the same show at various places in this state and that he thought that it was a "legitimate" show.

Defendant has no prior adjudicated record. I have given considerable thought to the proper penalty to be imposed in this case. The charges herein are serious. As has already been pointed out, the performances which resulted in charge (1) have no place and will not be tolerated upon licensed premises. Nor can there be any excuse for the conduct covered by charges (2) and (3). Rigid enforcement of the regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals which demand a severe penalty in this case. However, after considering, most carefully, all of the facts and circumstances herein, including the fact that (except for the entertainers) no overt acts of familiarity or indecency occurred between the female impersonators or any other persons upon the licensed premises (as was the case in Re Lloyd, decided simultaneously herewith), I shall not revoke the license but, instead, shall suspend it for the balance of its term.

If the licensee values the privilege of the license it will be well advised to avoid further violations. In addition, all licensees should take notice that degradation and depravity, which constitute so serious a threat to the public welfare and morals, will not be tolerated upon licensed premises and that such premises cannot be permitted to become havens for deviates or persons of low morality. Licensees who fail to heed this warning do so at their peril.

Accordingly, it is, on this 27th day of December, 1954,

ORDERED that Plenary Retail Consumption License C-76, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Polka Club, Inc., for premises 324 Springfield Avenue, Newark, be and the same is hereby suspended for the balance of its term, commencing at 2:00 a.m. January 3, 1955, and terminating at midnight June 30, 1955.

WILLIAM HOWE DAVIS  
Director.

DIRECTOR DAVIS  
Sent to Regular Mailing List  
STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1045

JANUARY 6, 1955.

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  10. STATE LICENSES - NEW APPLICATION FILED.

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS) - ALLOWING PREMISES TO BE CONDUCTED AS A  
NUISANCE - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME -  
LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

JESSIE LLOYD )  
76 West Jersey Street )  
Elizabeth 2, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-146, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Elizabeth. )  
-----)

Hueston & Frank, Esqs., by Robert T. Hueston, Esq., Attorneys for  
Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On July 1, 2, 3, 15, 22, 23 and October 8 and 9, 1954,  
you allowed, permitted and suffered female impersonators in  
and upon your licensed premises; in violation of Rule 4 of  
State Regulations No. 20.

"2. On all the occasions aforesaid you allowed, permitted  
and suffered lewdness and immoral activity in and upon your  
licensed premises and your licensed place of business to be  
conducted in such manner as to become a nuisance in that you  
permitted numerous persons who appeared to be homosexuals to  
frequent and congregate on your licensed premises and conduct  
themselves in a manner offensive to common decency and public  
morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that ABC agents visited defendant's  
licensed premises on a number of occasions between July 1 and  
October 4, 1954, as set forth in the charges and that, on all but  
one of these occasions, there were present in the barroom varying  
numbers (up to thirty) of male patrons who greeted each other as  
"Honey" and "Dear", called each other by women's names (such as  
"Stephanie", "Georgiana" and "Sally") and otherwise acted in an  
effeminate manner. During much of the time the licensee was per-  
sonally present and served drinks to these patrons.

During their visit on the night of July 2 the agents recog-  
nized a male patron known to them to be a "female impersonator."  
This patron informed the agents that he had "retired" and had  
settled down and married a Marine. He also acted in an extremely  
effeminate manner and, when one of his kind slapped his abdomen, he  
chided him saying, "Look out for my baby."

On their last visit (October 8 and 9) the agents saw at least  
thirty of these male patrons, some of whom were embracing and kissing  
one another. Others were seen in poses and attitudes more intimate  
and affectionate than is normal or common between males. One agent  
asked the bartender, "Is everybody present a fag?" and the reply  
was, "Most of them are queers" and, when the bartender was asked,  
"Can I get fixed up? How about that fellow in the white blouse.  
Is he a queer?", he replied, "Wait till I see who you mean. Some  
of them are paired up together." He then left the agents and, when

he returned, he reported, "Yeah, yeah" and followed with, "See these three guys coming in now. They are all queers. \*\*\* We got about twenty to twenty-five of them that come here. Look, I'm going to serve them now." When the latest arrivals were served, the agents made known their identity to the bartender who relinquished his duties to the licensee and volunteered a signed statement. The licensee made no statement.

From the foregoing it is obvious that defendant's licensed premises were, for a considerable period of time, a rendezvous for "queers" or, more politely, "female impersonators", within the contemplation of Rule 4 of State Regulations No. 20. It is also clear that some of them openly conducted themselves in the manner hereinabove described in defendant's barroom in full view of the licensee, the bartender and the other patrons. Even if there were no plea (non vult) in this case, it would be inconceivable that defendant was ignorant of their proclivities and, perhaps more important, their conduct upon the licensed premises.

Defendant has a prior record. Effective July 7, 1947, her license was suspended for ten days by the local issuing authority for sale of alcoholic beverages to minors. Cf. Re Lloyd, Bulletin 797, Item 6. However, because of the dissimilarity of the violation and the lapse of time, I shall disregard such prior record. Re Weinstein, Bulletin 1002, Item 13.

I have given considerable thought to the proper penalty to be imposed in this case. The charges herein are serious. The conditions and conduct hereinabove described constitute lewdness and immoral activity within the meaning of the Regulations and are offensive to common decency and public morals. There can be no excuse for such conditions or conduct upon licensed premises. Rigid enforcement of the Regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals. There should be a severe penalty in this case. However, after considering most carefully all of the facts and circumstances herein, including the fact that neither the patrons nor anyone connected with the licensed premises were "made up" or attired as females, and the absence of any lewd entertainment (as was the case in Re Polka Club, Inc., decided simultaneously herewith), I shall not revoke the license but, instead, shall suspend it for one hundred twenty days.

If the licensee values the privilege of the license, she will be well advised to avoid further violations. In addition, all licensees should take notice that degradation and depravity, which constitute so serious a threat to the public welfare and morals, will not be tolerated upon licensed premises and that such premises cannot be permitted to become havens for deviates or persons of low morality. Licensees who fail to heed this warning do so at their peril.

Accordingly, it is, on this 27th day of December, 1954,

ORDERED that Plenary Retail Consumption License C-146, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Jessie Lloyd, for premises 76 West Jersey Street, Elizabeth, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 2:00 a.m. January 3, 1955, and terminating at 2:00 a.m. May 3, 1955.

WILLIAM HOWE DAVIS  
Director.

BULLETIN 1050

FEBRUARY 16, 1955.

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3. DISCIPLINARY PROCEEDINGS (Passaic) - SALE TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
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9. STATE LICENSES - NEW APPLICATIONS FILED.
10. DISCIPLINARY PROCEEDINGS (Roselle) - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS (Carteret) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1050

FEBRUARY 16, 1955.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (FEMALE IMPERSONATORS - PERMITTING SOLICITING AND MAKING ARRANGEMENTS FOR HOMOSEXUAL ACTS - OBSCENE LANGUAGE AND CONDUCT) - PRIOR RECORD - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

ALBERT MANZO )  
T/a THE CASINO )  
6 Bank Street )  
Paterson 6, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-124, issued by the )  
Board of Alcoholic Beverage Control )  
for the City of Paterson. )

-----)  
Albert Manzo, Defendant-licensee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Thursday night, October 14, 1954, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On Thursday night, October 14, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for acts of perverted sexual relations between male patrons; in violation of Rule 5 of State Regulations No. 20.

"3. On June 9, 10, 16, 17, 23, 24, 25, July 7, 8, September 24 and October 14, 1954, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"4. On the occasions aforesaid, you allowed, permitted and suffered your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you made offers to procure, procured and permitted the making of offers to procure females for male patrons for the purpose of illicit sexual intercourse, permitted persons who appeared to be homosexuals to congregate on your licensed premises and to mingle with and solicit male patrons for acts of perverted sexual relations, permitted unescorted females frequenting your licensed premises to make overtures to male patrons for illicit sexual intercourse and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that several ABC agents visited defendant's licensed premises on the occasions set forth in the charges. All of these visits were in the evening, sometimes extending into the early morning of the following day. It is unnecessary to recite, at length, all of the sordid facts and circumstances revealed by the agents' reports. Some of the more significant events and conduct may be summarized as follows:

During their visits in June and July 1954, the agents were served, for the most part, by a bartender called "Doug" who, from time to time, spent considerable time talking with them. Much of his conversation dealt with the availability of various female patrons for illicit sexual intercourse and was in language too vulgar and revolting to be repeated. On many of these occasions Doug poured numerous drinks of alcoholic beverages for himself and for male and female patrons and occasionally purchased food and cigarettes, all paid for with money belonging to the agents which he freely took from in front of them on the bar. From time to time Doug would prod the agents by telling them that it was their "turn" to buy the drinks. The language used by the bartender and many of the patrons was vulgar and obscene in the extreme and, on occasion, loud arguments involving the most revolting language and epithets were permitted to continue without any attempt at restraint.

On a number of occasions females seated at the bar discussed with the agents their price for engaging in illicit sexual intercourse and several of these females made arrangements with the agents to take them out for that purpose. One such female was known as "Vi", whose breasts were fondled by the bartender Doug during the course of a vulgar and obscene verbal exchange in which reference was made to certain abnormal sex practices. Several times Doug took money from in front of the agents and stuffed it down the front of Vi's dress. While seated at the bar with the agents Vi made arrangements to return the following night with a female companion for the purpose of taking the agents out for illicit sexual intercourse. These arrangements were communicated to Doug who said that he had never engaged in sexual intercourse with her but that some of the patrons had done so. He warned them, however, to use a "rubber" (contraceptive device) to avoid infection. Later, the arrangements were reaffirmed by Vi and the agents repeated them to Doug who said that he had to be careful of the ABC. When the agents left they asked him if he would be on duty the next evening. He said that he would be and they told him that they would return.

When they entered the following evening, the agents asked Doug for Vi and he assured them that she would be there. When she failed to appear by 10:30 p.m., the agents mentioned that fact to Doug and told him that they had come there to have intercourse and asked if there were any other females available. Doug told them that he could not make the arrangements for them and that they had to talk to the females themselves, adding that all of them were amenable. When the agents said that they didn't want to make a mistake and get into trouble Doug told them that if they were mistaken he would tell them but reassured them, in vulgar terms, that all of the female patrons were available for the purpose. Later, a male entered, spoke to two females for a short time and departed with one of them whose companion said that she would be back in a half hour. The agents remonstrated with Doug, saying that they had waited for hours while the other man had succeeded in a few minutes. He retorted "Man I told you, you gotta talk to them, they all --- (engage in intercourse)."

On their visit on June 23, 1954, Doug introduced the agents to two females who sat at the bar and drank with them. Doug told the agents that they were relatives of his and offered them to the agents for sexual intercourse for \$20.00 and \$15.00, respectively. When the agents balked at the price the females, in vulgar and obscene terms, agreed to accept less and made arrangements to leave with the agents later that evening. Meanwhile Doug continued to discuss the subject



of females and intercourse in the foulest and most obscene language. The agents spoke to the same two females later on and they agreed to a price of five dollars. Doug told the agents that the females were "clean" and that they would need no "rubbers". A male seated nearby joined the conversation and suggested that the females might also engage in abnormal sexual activity. However, the females later left the premises with other males. When the agents returned several nights later Doug, in foul and obscene language, told them that they had bungled the matter and that he would not tell them any more, meanwhile buying drinks for himself and other patrons from the agents' money and carrying on a loud conversation in the filthiest and most obscene language.

On July 7, 1954, the agents returned to defendant's licensed premises where they again found Doug tending bar. In the conversation which followed, the agents asked where all the women were and Doug told them that it was early and that there would be some women there later. A male patron whom the agents had previously met at the premises spoke to two females who then joined the agents at the bar and introduced themselves. After consuming several drinks at the expense of the agents, these females made arrangements to take them to the home of one of the females for intercourse. However, the females suggested that they stay at the licensed premises and go out later. Meanwhile, Doug became involved in a vulgarly profane argument with a young female. The two females, aforementioned, left the agents and went outside with the other female. The agents also left with the understanding that they would all return to defendant's licensed premises later that evening. Upon their return the agents found the two females and questioned Doug concerning them. He refused to discuss them beyond saying that they were clean, adding that, if he were not behind the bar, he would talk to them but that he could not say anything because he might get in trouble. At this point one of the two females said that her husband was outside. The agents left without further incident.

When they returned on September 24, 1954, the agents found Doug at the customers' side of the bar. He explained that he no longer worked there and introduced them to "John" and "Boy", the two bartenders. Doug commingled the money which the two agents had placed on the bar, pushed it toward John, the bartender, and announced that everyone would have a drink. John poured drinks for everyone, including himself, and took the agents' money in payment. Doug asked them if they wanted to have intercourse and introduced them to a female who quoted a price of \$5.00 and \$2.00 for the room. While the agents bargained with her, Doug called to John and ordered another round of drinks, including one for John, who stood listening to the conversation between the agents and the female which ended by her reiterating the price of \$7.00, including room. John continued to converse with the agents for a time during which Doug grabbed the female by the breast. There followed a loud, vulgar and obscene exchange between them. Doug and the female continued to consume food and drinks at the agents' expense and, on one occasion, she demanded and received from John 90 cents of the agents' change. Later the agents and the female resumed their bargaining and she agreed to accept \$5.00 from each of them. The agents then conversed with the two bartenders, separately, each of whom said that he did not know the female too well but that she was "all right". When asked where they could buy "rubbers", Boy told the agents that they might find a place open "uptown". The female left with two other males and the agents left a half hour later after telling John to tell the females they would return. They returned later but she was not there.

The agents again returned to the premises on October 14, 1954, taking with them some money, the serial numbers of which had been



noted for purposes of identification. John was tending bar. The agents noticed several males who acted and talked in an effeminate manner, swaying their hips as they walked and eyeing male patrons as they entered, and whispering together. One of these patrons danced cheek to cheek with another male patron within a few feet of the bartender, John, and the other, who wore a feminine type vest with a woman's brooch and chain on his lapel, said, "Look at Donald dancing with his wife". The bartender made no comment. The effeminate male who had been dancing with another male sat next to the first agent (hereinafter referred to as Investigator "H") and rubbed his shoulder, saying "You're a cutie. Hi there doll. What's the matter, are you bashful?" John, the bartender, who was serving them a drink, merely laughed. Another male patron was constantly making remarks to the two effeminate males and called them obscene names, implying that they were "queers". At times he called them "queens". Most of the time John was directly across the bar from him. This male then engaged the agents in conversation and offered to procure females with whom they could have intercourse. Meanwhile, the one effeminate male continued to talk to Investigator "H" while the other spoke to his companion, Investigator "G". Each of these effeminate males fondled the privates of the agents and offered to take them out for abnormal sexual relations and they and the agents carried on a running conversation with John relaying to him what was taking place. He merely laughed. The other male joined the conversation and urged the agents to go out with the effeminate males instead of waiting for females and gave the effeminate males a vulgar and obscene admonition to give the agents "their money's worth". John, who was listening to this entire conversation, again laughed but said nothing. While John remained there was a discussion of the price to be paid by the agents, ending in agreement at the price of \$5.00 each, which the agents paid to the effeminate males, with marked money, directly over the bar. The other male then demanded \$5.00 for procuring but accepted \$2.00 from each agent (also marked money) paid over the bar. All of this occurred in the presence of John, the bartender.

When the agents left with the effeminate males they were stopped by other agents and local police. The other male was also apprehended. All of the marked money was recovered from them except one \$5.00 bill which one of them admitted that he had accepted but had thrown to the ground when he was apprehended. The activities at the bar were admitted. One of the effeminate males admitted that he is a homosexual but the other said that he was "only kidding". John, the bartender, refused to give a written statement but admitted orally that he knew that the agents were going out ostensibly to have abnormal sexual relations with the two effeminate males. In the presence of the defendant, who arrived at his licensed premises while it was being searched, John also admitted that the agents had told him of the arrangements, had asked him whether "the other two fellows were all right" and that he had told them "Yes, they're all right, they won't hurt you". At no other time during any of the agents' visits did they see defendant upon the licensed premises. On two occasions they saw defendant's son tending bar but he did not actually participate in the events hereinabove recounted.

Defendant has a prior record. His license was suspended by the local issuing authority for eight days, effective October 2, 1950, for sale of alcoholic beverages to minors. The incidents and conditions which resulted in the charges herein are shocking and revolting. Clearly, they are offensive to common decency and constitute a serious threat to public morals.

The events which took place in defendant's barroom, the language used, the "clipping" of the patrons by the bartender, the activities of the patrons (both male and female) and the general atmosphere lead inescapably to the conclusion that defendant permitted his licensed premises to be conducted in such a manner as to become a nuisance. It has long been held that the meaning of "nuisance" as used in the regulations is the dictionary definition, namely, "an offensive,

annoying, unpleasant or obnoxious thing, practice or person; a cause or source of annoyance." Webster's New International Dictionary. See also Benedetti v. Trenton, Bulletin 1040, Item 1; Re Cosfair Corporation, Bulletin 875, Item 9; Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3. It is no excuse that the licensee did not personally participate. As was said in Re Paton, Bulletin 898, Item 3:

"\* \* \*even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises'. Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140!'"

See also Greenbrier v. Hock, 14 N. J. Super. 39 (App. Div. 1951).

I have given much thought to the penalty to be imposed in this case. Most certainly the public is entitled to be protected from the conduct and conditions hereinabove portrayed, which, under ordinary circumstances, would call for revocation of the license. However, defendant appeared before the Director on the question of penalty and stated that, from November 1953 until recently, he had been hospitalized a number of times and had been unable to be physically present in his licensed premises; that, during that period, he has had several bartenders whom he first investigated and found to possess good reputations and that he personally had no knowledge of or reason to suspect that these violations were taking place. Thus, defendant, although absent from his licensed premises, did not voluntarily abdicate his responsibilities for personal gain as was the case in Re Overlook Hotel, Inc., Bulletin 848, Item 4 and Re Schumacher, Bulletin 901, Item 5. Under the peculiar circumstances of this case and taking into account the fact that the instant case was pending when I announced my intention to impose more severe penalties in cases of this kind (Re Heavier Penalties, Bulletin 1041, Item 9), I shall suspend defendant's license for 180 days. Re Sussman & Sussman, Bulletin 1041, Item 2; Re Bar 31, Inc., Bulletin 1047, Item 3. However, I again reiterate and reaffirm my intention to impose heavier penalties for future violations of this kind, as enunciated in Re Heavier Penalties, *supra*. Furthermore, defendant will be well advised to see to it that no further violations occur upon his licensed premises whether he is present or not. If he must absent himself, it might be wiser for him to lock the door.

Accordingly, it is, on this 24th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-124, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Albert Manzo, t/a The Casino, 6 Bank Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. January 31, 1955; and it is further

ORDERED that if any license be issued to said licensee or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 3:00 a.m. July 30, 1955.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - CONCEALING MATERIAL FACTS (NON-RESIDENCE AND PRIOR SUSPENSION) - PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF ITS TERM, WITH LEAVE TO APPLY FOR LIFTING OF SAID SUSPENSION 45 DAYS AFTER CORRECTION OF ILLEGAL SITUATION AND RESUMPTION OF BUSINESS.

In the Matter of Disciplinary  
Proceedings against

BUDD LAKE AMUSEMENT CORP.  
T/a OASIS BAR AND GRILL  
Shore Road  
Mount Olive Township  
P.O. Budd Lake, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-10, issued by the  
Township Committee of the Township  
of Mount Olive.

Michael N. Steinberg, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that it falsified its application for its current plenary retail consumption license by (1) falsely denying an agreement to pay to another a percentage of the net profits from the licensed business; (2) falsely representing that the officers, directors and stockholders of the corporation were bona fide residents of New Jersey; and (3) falsely denying that its license had been previously suspended; and (4) had failed to answer some of the questions in said application, thereby evading and suppressing other material facts.

The file herein discloses that defendant made a verbal arrangement with Thomas Daloia whereby he was to conduct the licensed business and was to receive 30 per cent. of the net profits therefrom at the close of the season; that Jean Nadel, Blanche Pomerantz and Samuel Katz, defendant's officers, directors and stockholders, are residents of New York State and were such when the application was filed; that the license had been suspended by the State Director for five days, effective March 13, 1952, for sale of alcoholic beverages to a minor; and that Questions 9(b), 23, 27(b) and 28 of the application were not answered.

In effect, the license was "farmed out" to Thomas Daloia. Such action is a serious violation of the law, the minimum penalty for which is suspension of the license for twenty days. Re Ghio, Bulletin 968, Item 1. The usual suspension for the violation covered by Charge (2) is ten days. Re C. M. Family Liquor Store, Inc., Bulletin 956, Item 11. An additional ten days will be added for Charges (3) and (4). Since, as has already been pointed out, defendant has a

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street, Newark 2, N. J.

BULLETIN 1063

MAY 24, 1955

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street, Newark 2, N. J.

BULLETIN 1063

MAY 24, 1955

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (FEMALE IMPERSONATORS) - ALLOWING PREMISES TO BE CONDUCTED AS A NUISANCE - EMPLOYING FEMALE BARTENDER IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary  
Proceedings against

Adele Kaczka & Angelina C.  
Trobiano,  
t/a N. Y. Bar,  
20 Cross Street,  
Paterson 2, New Jersey,

CONCLUSIONS

AND

ORDER

Holders of Plenary Retail Consump-  
tion License C-281, issued by the  
Board of Alcoholic Beverage Control  
for the City of Paterson.  
(see Note below)

Leo J. Berg, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

On September 20, 1954, the following charges were  
preferred against defendants:

"1. On March 18, 19, 20, June 2, 18, 25 and September  
16 and 17, 1954, you allowed, permitted and suffered  
female impersonators in and upon your licensed premises;  
in violation of Rule 4 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted  
and suffered lewdness and immoral activity on your licensed  
premises and your licensed place of business to be conducted  
in such manner as to become a nuisance, in that you permit-  
ted numerous persons who appeared to be homosexuals to fre-  
quent and congregate on your licensed premises and there con-  
duct themselves in a manner offensive to common decency and  
public morals; in violation of Rule 5 of State Regulations  
No. 20.

"3. On March 19, 20, June 2, 18, 25 and September 16 and 17,  
1954, you had in your employ a female bartender who was not  
the licensee or the wife of the licensee, in violation of  
Section 7 of a Resolution adopted by the Board of Aldermen  
of the City of Paterson on June 28, 1935, as amended December  
5, 1938."

On December 15, 1954, the following supplemental  
charges were preferred against defendants:

Note: During the pendency of these proceedings, the local Board, after  
receipt of notice that the partnership had been dissolved, continued  
the license in the name of Adele Kaczka, t/a N. Y. Bar.

- "1. On December 8, 9 and 10, 1954, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.
- "2. On all the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity on your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, in that you permitted numerous persons who appeared to be homosexuals to frequent and congregate on your licensed premises and there conduct themselves in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.
- "3. On all the occasions aforesaid, you had in your employ a female bartender who was not the licensee or the wife of the licensee, in violation of Section 7 of a Resolution adopted by the Board of Aldermen of the City of Paterson on June 28, 1935, as amended December 5, 1938."

On October 11, 1954, defendants, through their then attorney, pleaded non vult to all charges. However, following a substitution of attorney, defendants withdrew their plea of non vult to Charges 1 and 2 of each set of charges and entered pleas of not guilty. They pleaded non vult to Charge 3 of each set of charges.

At the hearing on the contested charges, six ABC agents appeared and testified. In the following summary of their testimony and the comment thereon, each will be designated "Investigator" and will be referred to by the first initial of his last name, namely, "C", "G", "K", "H", "T" and "M". Their testimony, taken together, may be summarized as follows:

On all of the dates mentioned in the charges, one or more of the investigators visited the barroom of defendants' licensed premises. These visits were made at night and varied in duration from a half-hour to several hours. From time to time the following persons were tending bar, either alone or together: a man called "Riley", a woman referred to as "Ester", and a man called "Joe." The number of patrons varied from time to time, ranging from a half-dozen in the early part of the evening to approximately 50 later on, the vast majority of them being dressed in male attire.

The investigators, testifying with respect to their observations, stated that a large percentage of these male patrons, variously estimated at 60% to 90%, conducted themselves in an effeminate manner, walking, talking and moving their arms and bodies in a manner common to women, puckering their lips and speaking in high-pitched voices. These patrons gathered in small groups either at the bar, where one would stand behind another who was seated and would drape his arms around the latter in a caressing manner, or at the tables where they would sit in pairs holding hands. Many of them from time to time went to the "ladies' room" rather than the "men's room".

There is a juke box in the rear of the licensed premises and a small cleared space for dancing. The investigators observed male patrons (frequently those seated at the tables) dancing together in the manner customarily engaged in by a "couple" consisting of a male and a female and commonly known as "ballroom

dancing", where one of the partners (usually the male) "leads" and the other partner (usually the female) "follows". On only one occasion did the investigators see a couple consisting of a male and a female dancing on the licensed premises. During these dances, particularly those at slow tempos, the "partners" danced "cheek to cheek" with their bodies close together. On occasion, the "leader" (assuming the role of the male partner) would run his hand up and down the back of his partner (assuming the female role) and would place his leg between his partner's legs. The number of such male "couples" dancing at any one time was as high as 15. At the conclusion of the dance, the "partners" would return to the bar or to the table, as the case may be, where they would resume their intimate attitudes, frequently with their heads close together, caressing and giggling together. Frequently, the one who would assume the "lead" or male role in dancing was particularly attentive toward and waited on his "partner". On several occasions male patrons seated or standing at the bar were seen to hug and kiss each other and to whisper into each other's ears. On other occasions male patrons would greet other male patrons with expressions like "How are you, honey?", accompanied by a hug or kiss on the cheek or neck. All of this conduct took place in full view of the bartenders and, on many occasions, they watched and talked to the dancers. On one occasion, when defendant Adele Kaczka was present, a male patron performed a "solo" dance after which other male patrons swarmed around him and kissed him on the cheek. Thereafter, another male performed a modified "strip tease" during which he removed his shirt so that he was bare from the waist up. Some of the patrons dared him to take off his trousers but, after another male told him to stop, he discontinued his dance and put on his shirt.

At no time during the incidents hereinbefore related did anyone connected with defendants' licensed premises do anything or say anything in connection therewith. Indeed, both "Riley" and "Joe", the bartenders, themselves walked and acted in much the same manner as their effeminate male patrons and, although they spoke normally to the investigators, they used a high-pitched, effeminate voice when conversing with the groups of male patrons hereinbefore mentioned and "Ester", when asked by the agents whether these male patrons dancing together and hugging and kissing each other were "queers" or "fairies" or were "in love", ignored the questions. On one occasion, when the licensed premises was crowded with male patrons who behaved in the manner hereinbefore described, "Ester" asked "Joe", "Where do they all come from?" Some of the patrons referred to "Joe" as the "barmaid".

On March 20, 1954, while Investigators "C" and "M" were at the bar, a heavy-set male patron leaned against Investigator "M" and placed one arm around him and, with his other hand, rubbed the latter's thigh, meanwhile "groaning or moaning" something into his ear. The man used the word "love" and asked where he could meet the investigator and said that he would like to take him out. Unable to persuade the man to desist, Investigator "M" asked "Ester", "What's going on here?" "Ester" spoke to "Riley" and then told the man to stop bothering the patrons or to leave.

On September 17, 1954, while there were approximately



40 male patrons in the barroom (at least 30 of whom were conducting themselves in an effeminate manner), the investigators saw one young man withdraw from one of the groups and join another group at the bar saying, "I just had to leave that crowd. They were talking about ---s (a foul word for the phallus). They were talking about little ones and big ones. I don't care what size they are as long as they have the stuff."

On this same night, a male patron approached another male patron who was at the bar near Investigator "H" and asked him to dance. After the dance was concluded, the male patron last mentioned returned to his place at the bar and said to his companion in the presence of "Joe", the bartender, "I like to dance with Georgie. He puts it right up close to me."

On December 10, 1954, while "Joe" and "Ester" were tending bar, one male patron was standing facing another male patron who was seated on a chair near the dance floor. The latter had his arms around the former's waist and had his face near the former's privates, rubbing his cheek against them. This continued for fifteen minutes, after which the two males danced together and returned to their former position where they resumed their former attitude and activity.

After observing the aforementioned conduct of defendants' male patrons for several hours on December 10, 1954, the investigators asked "Ester" what was wrong and adverted to the fact that male patrons were hugging and kissing each other. She did not answer them but went over and spoke to several of these patrons who continued their activities until they started to dance. The investigators then identified themselves to "Ester" and "Joe", who declined to answer their questions. "Ester" admitted seeing males dance together but "Joe" denied seeing it. However, when the investigators pointed to males who were still dancing together, "Joe" said that he would rather wait for the licensees before talking further. Both he and "Ester" denied seeing male patrons hugging and kissing each other.

Defendant Adele Kaczka came to the licensed premises but, beyond saying that she saw nothing wrong with males dancing together and, claiming that some of them were dancing instructors, declined to say anything.

Defendant Adela Kaczka, "Ester", and a psychiatrist testified on behalf of defendants. "Ester" denied that she knew that Investigator "M" had been molested at the licensed premises and also denied that she either had a conversation with him or heard him talking with any male patron, as claimed by the investigators.

Defendant Adele Kaczka denied that any immoral activities were permitted on the licensed premises. She admitted that male patrons had danced together but again claimed that dancing teachers frequent the licensed premises. She admitted that they "get close together" but said that they teach each other different steps and practice dancing. She denied that she had seen any men kissing each other at the licensed premises.

The psychiatrist defined a homosexual as one who "has



not progressed to the so-called mature level of sexual adjustment in our society, namely, the heterosexual level". He testified that no single physical manifestation is conclusive proof that a person is a homosexual and that there is "no direct correlation between a man's psychological makeup and his physical makeup". He expressed the opinion that homosexuality is not contagious and that seeing a group of homosexuals would not harm the average or normal person but that, in order for it to affect people, they have to have either abnormal upbringing or factors that cause the development of homosexuality in them or, in the case of children, if they are exposed to that kind of behavior over a long period of time, it would affect their behavior. He further testified that behavior only suggests or raises the suspicion of homosexuality but is not conclusive and that detection would be difficult for an untrained person. He also testified that the mere fact that men danced together would not necessarily indicate homosexuality. He explained the bi-sexual theory according to which every individual has some elements of the male sex and some elements of the female sex, and expressed the opinion that a man having a preponderance of female characteristics is more likely to be a homosexual. On cross-examination, he was asked a hypothetical question which embodied a summary of the testimony of the investigators with respect to the actions and conduct of some of the male patrons, as hereinbefore set forth, at the conclusion of which he was asked whether, given those facts, he would conclude that they were "apparent homosexuals or apparent female impersonators or both". He answered that, assuming those facts, if he personally saw and heard all of those things, he would be suspicious that those persons were a group of homosexuals. He reiterated his belief that the average normal adult would not be adversely affected by contact with a homosexual.

At his request, counsel for defendants appeared before the Director in oral argument. He contended that, because none of the male patrons was dressed in female attire or imitated the opposite sex, guilt on Charge 1 had not been established. There is ample proof that these patrons conducted themselves and acted like females, despite the lack of conventional female garb. Such apparel is not essential to a finding of guilt on Charge 1. Re One Thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Counsel further contended that the investigators were not qualified to testify that these persons were homosexuals. The agents testified to their observations with respect to these patrons. Counsel's contention is unsound, in the light of the answer to the hypothetical question, hereinbefore set forth, given by defendants' own expert witness.

Counsel further contended that homosexuals are not a menace to society and cannot be barred from licensed premises. From the testimony of defendants' own expert witness, it is clear that homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in the manner hereinbefore related, they are a threat to the safety and morals of the public. As Judge Freund, speaking for the Appellate Division of the Superior Court, said in Benedetti v. Trenton (decided April 5, 1955; Docket A-131-54; not yet officially reported):

"In the public interest, the right to prescribe the conditions under which intoxicants may be sold is practically limitless."

Counsel also contended that he had assumed that the charges involved only the fact that the licensees had permitted these people to congregate on the licensed premises and that he was surprised to find that the Division's case involved specific acts of indecency. He further contended that the acts related by the investigators in their testimony did not, in fact, take place upon the licensed premises but were developed by the investigators to build up their case. I am not impressed with this contention, in view of the explicit nature of the testimony and the number of investigators who testified and, more particularly, in view of the fact that counsel, although afforded opportunity to request a continuance (if he was surprised) to permit further preparation of the defense, did not avail himself of such opportunity.

After considering, most carefully, all of the evidence in this matter, I find that the events and conversations related in the testimony of the agents in fact took place at defendants' licensed premises.

Of course, even in the absence of actual knowledge, the licensees cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on their licensed premises. They are responsible, in disciplinary proceedings, for violations committed in their absence or by their agents, servants or employees, even if they did not personally participate in the violations or if they were committed contrary to instructions. Rule 31 of State Regulations No. 20; Re Paton, Bulletin 898, Item 3. See also Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct.1947); Greenbrier, Inc. v. Hock, 14 N.J.Super. 39 (App.Div. 1951).

I find defendants guilty on Charges 1 and 2. They have pleaded non vult to Charge 3.

I have given much thought to the penalty to be imposed in this case. The situation disclosed by the record cannot be tolerated. As I pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6, and Re Lloyd, Bulletin 1045, Item 7, "rigid enforcement of the regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals which demand a severe penalty in this case", and "degradation and depravity which constitute so serious a threat to the public welfare and morals, will not be tolerated upon the licensed premises and ... such premises cannot be permitted to become havens for deviates or persons of low morality".

Under all the circumstances in this case, including the number and type of charges, and particularly since the original charges in the instant case were pending when I announced my intention to impose more serious penalties in cases of this kind (Re Heavier Penalties, Bulletin 1041, Item 9), I shall suspend defendants' license for 180 days. Re Manzo, Bulletin 1051, Item 1. See also Re Polka Club, Inc., supra.

Accordingly, it is, on this 21st day of April, 1955,

ORDERED that plenary retail consumption license C-281, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Adele Kaczka & Angelina C. Trobiano, t/a N. Y. Bar, for premises 20 Cross Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m. April 30, 1955; and it is further

ORDERED that, if any license be issued to said licensees or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 3 a.m. October 27, 1955.

WILLIAM HOWE DAVIS,  
Director.

2. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX-PAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATIONS NO. 13 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE RECOGNIZED.

In the Matter of the Seizure on )  
December 11, 1954, of a quantity )  
of whiskey, two cartons of cigar- )  
ettes and a Pontiac sedan, on the )  
north-bound lane of the New Jersey )  
Turnpike, at the 34 Mile Post, in )  
Mount Laurel Township, County of )  
Burlington and State of New Jersey. )  
----- )

Case No. 8778

On Hearing

CONCLUSIONS and ORDER

James Logan, Jr., Esq., Attorney for Marcus Felton.  
George Brooks, Esq., by Edward Horne, Esq., Attorney for General  
Motors Acceptance Corporation.

I. Edward Amada, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of whiskey, two cartons of cigarettes, and a Pontiac sedan, described in a schedule attached hereto, seized on December 11, 1954 on the northbound lane of the New Jersey Turnpike, at the 34 Mile Post, in Mount Laurel Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Marcus Felton appeared and sought return of the Pontiac sedan and the alcoholic beverages seized in the case. An appearance was also entered on behalf of General Motors Acceptance Corporation, which sought recognition of its alleged lien on the motor vehicle.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to the above-named counsel for the claimants. No objection or exception to such report was filed within the time limited therefor.

I have given careful consideration to the complete record in the case and have reviewed the Hearer's Report, and find the following to be established by the evidence presented:

On December 11, 1954 a New Jersey State Trooper stopped the Pontiac sedan while on traffic duty on the highway. The motor vehicle was being driven by Marcus Felton, its registered owner. The trooper discovered 18 one-half gallon bottles, 24 four-fifth quart bottles, 120 pint bottles, 49 half-pint bottles and four one-quart bottles of various brands of tax-paid whiskey

BULLETIN 1073

JULY 18, 1955.

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8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.
9. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE YEARS NOT ELAPSED SINCE DATE OF CONVICTION - APPLICATION DENIED.
10. STATE LICENSES - NEW APPLICATIONS FILED.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS) - ALLOWING PREMISES TO BE CONDUCTED  
AS A NUISANCE - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

ALBERT BADER,  
t/a Bader's Bar,  
2 Main Street,  
Paterson, N. J., )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption )  
License C-115, issued by the Board of )  
Alcoholic Beverage Control for the )  
City of Paterson. )

ORDER

----- )  
Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On February 24, 25, March 2, 3, 4 and 5, 1955, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you permitted persons who appeared to be homosexuals to congregate on your licensed premises and to engage and participate in foul, filthy and obscene language and conduct and to mingle with, solicit and make overtures for and arrangements with patrons for acts of perverted sexual relations and to solicit patrons to purchase numerous drinks of alcoholic beverages for consumption by them and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that two ABC agents were at defendant's licensed premises in the late evening and early morning hours of February 24-25, March 2-3 and March 4-5. They remained at the premises for about 3 hours on their first two visits and about an hour on their last visit. During all their visits there were four homosexuals present, named "Toni," "Harriet," David and Bruce. They wore feminine attire at times, and spoke and acted in a feminine manner. They did not merely order and consume alcoholic beverages and keep to themselves, but attached themselves to the agents, solicited the agents to purchase drinks of alcoholic beverages for them and made indecent proposals to the agents. Some of the persons present, presumably aware that they were homosexuals, invited one of them to partake in perverted sexual relations.

In specific detail of what occurred, "Jack" and "Tony" were on duty as bartenders on February 24-25. The agents observed the homosexuals dance with each other, cheek to cheek, swaying their hips in female fashion, and coming in close contact

with the lower part of their bodies. After a conversation with a woman concerning whether "Toni" could develop an affection for one of the agents, this woman introduced "Toni" to the agents. "Toni" then introduced "Harriet," David and Bruce to the agents. "Toni" remarked to the agents that they could have their perverted services at any time. These perverts referred to each other as "whores." "Jack" the bartender, called them "dolls" or "honey." David had long curly hair, wore mascara; his eyebrows were tweezed and penciled and he wore a woman's brooch around his neck and a woman's elastic waistband.

On March 2-3, "Jack" and "Harry" were on duty as bartenders. "Harriet," "Toni," Bruce, and another of their ilk were present. "Harriet" approached the agents and asked them whether they were going to buy him and the other "girls" a drink. The agents told "Harry," the bartender, to give "her" and her "girlfriends" a drink. "Harry" laughingly repeated "give the girls a drink." "Harry" served drinks to the group of homosexuals at the agents' expense and thereafter on each instance when the agents ordered a drink for themselves. "Harriet" blew on the back of the neck of one of the agents, placed his arms around him, and fondled the agent sexually. The homosexuals referred to each other as "whores," "queers," and "gays" in the presence of the agents and one or the other of the bartenders. Bruce was referred to as the "Queen Mother." These homosexuals proposed to the agents to indulge with them in acts of sexual perversion.

The other homosexual aforementioned, not previously observed by the agents, was known as "Franky." He was seated a few seats distant from the agents. They overheard him, in a loud voice, tell a man, "You would make a very good husband," and "I'd love to make love to you." He also fondled another man. He appeared to have had a number of drinks. Both bartenders participated in the general merriment at "Franky's" actions. However, when he fondled the patron, "Jack" the bartender told him, "I think you had enough to drink, doll; no more for you honey, I think you had better go home to mother." Nevertheless, "Franky" was permitted to remain in the tavern and continue to consume alcoholic beverages. At one time "Franky" placed his arm around one of the agents and pressed the lower part of his body against the agent.

David was again wearing mascara, with penciled eyebrows and wearing woman's attire. Several of the homosexuals danced together and pressed their bodies against each other. Bruce did a dance during the course of which he did bumps, grinds and made other indecent gestures.

On March 4-5 "Jack" and "Harry" were on duty as bartenders. "Jack" has been identified as Albert Bader, the licensee. "Harry" has been identified as Daniel Joseph Bolen. "Harriet" approached the agents and asked them to buy him a drink, which they did. Shortly thereafter, David, Bruce, "Toni" and another homosexual referred to as "Josephine" joined the agents. These homosexuals wore various articles of feminine attire and used feminine make-up. They conducted themselves in a feminine manner. One or more of them offered to indulge with the agents in acts of sexual perversion. The agents informed Bolen, the bartender, of this offer and he replied, "It's all right if you want to."

During the entire period that the agents were in the

licensed premises on this occasion, one of this group of homosexuals was seated on each side of an agent and the balance of the group stood behind the agents. During the course of the evening five men entered the tavern. One of these men approached "Harriet" and invited "Harriet's" and his "girlfriends" perverted services for himself and his companions. "Harriet" told this person that two agents were their "husbands" for that evening. Later, two other men approached "Harriet." One of these men made a lewd remark, whereupon "Harriet" fondled this man who said, "Let's go." "Harriet" replied, "No I have a date for tonight."

At about 12:35 a.m., by previous arrangement, other ABC agents and local police officers entered the tavern. The officers identified themselves to Albert Bader, the licensee, and asked him to account for the presence of the homosexuals in his tavern. Bader replied that since the suspension of the license of a neighboring tavern homosexuals and lesbians had made a practice of frequenting his tavern.

The ABC agents obtained sworn signed statements from both Bader and Bolen. Bader, in his statement, repeated that he permitted men dressed in female attire to frequent his tavern, but attempted to claim that he chased them out at every opportunity, but that when they came in four or five at a time he could not do anything. He describes these persons as "queers," some of whom do not act or talk like a man, and that they have been frequenting his tavern for about a month. Further, that if there were only one or two of them he would chase them out, but that there are always four or five of them in his place and he cannot chase them because they told him that their money is as good as anyone else's; that there is nothing he can do about it; that if he called the police he would have to go to police headquarters and he has no one to take care of the tavern while he is away.

It is to be noted that when verbally interrogated by the agents Bruce claimed that he had been patronizing the tavern for the past seven or eight years; David claimed that he had been patronizing the tavern for the past year and "Harriet" claimed that he had been patronizing the tavern for the past month.

Bolen, in his statement, confirms the fact that the agents told him of the indecent proposals made to them by the "queers" and claims that he replied, "I don't know from nothing"; that four "queers" have been frequenting the licensed premises.

The charges herein are amply established by the evidence. The practices described are most offensive. Oral argument was had before me at which time the defendant's attorney urged that the penalty to be imposed should reflect what he considers to be mitigating circumstances.

His first contention is that the presence of homosexuals on licensed premises presents a problem difficult for a licensee to cope with; that their presence does not constitute a violation so long as they conduct themselves properly. The basic premise underlying this contention has no application to the instant case. These homosexuals did not attempt to conceal their abnormality and seek the advantages which a tavern affords to normal persons, restricting themselves to their mutual companionship. On the contrary they flaunted their feminine characteristics and cajoled strangers for drinks and offered to indulge with strangers in abnormal sexual practices. Surely this is highly reprehensible



and improper conduct, and constitutes a violation of the Rules and Regulations of the Division of Alcoholic Beverage Control.

The final contention is advanced that the licensee could not eject these undesirable persons; that he turned off the music box when they danced together and repeatedly tried to eject them from his tavern. This is not borne out by his actions when speaking to "Franky" as aforementioned on March 2-3, nor do the agents report that the defendant, although present on each of their visits, made any attempt to stop the music box, eject the homosexuals or object to their cadging drinks from the agents.

In any event it is simple common sense that a licensee is not helpless to rid himself of undesirable patrons; he is master in his own house if he sincerely wishes so to be. This principle has been referred to and publicized in the early days of this Division. Commissioner Burnett, in Re Dorsey, Bulletin 226, Item 11, quoted from the opinion of Judge, afterwards Justice, Fort, in State v. Lynch, 23 N.J.L.J. 45, wherein he said:

"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

Decisions of this Division to the same effect are Re Rollka, Bulletin 142, Item 4, Re Plaza Hotel-O'Leary, Bulletin 188, Item 9, and Re Griffin, Bulletin 200, Item 7.

A similar contention that homosexuals cannot be barred from licensed premises has recently been rejected. Re Kaczka & Trobiano, Bulletin 1063, Item 1.

It is difficult to believe that the defendant was ignorant of this common sense principle. His excuse that he could not call the police because he could not absent himself from the tavern is flimsy. He had two bartenders. It appears more likely that he welcomed the influx of this new business, not realizing the penalty which he was inviting. He may have been shortsighted, but not helpless.

The offense is a major violation of our Rules and Regulations. As I said in Re Kaczka & Trobiano, supra:

"... it is clear that homosexuals may well have a harmful effect on some members of the public. Furthermore where they congregate and conduct themselves in the manner hereinbefore related, they are a threat to the safety and morals of the public."

Considering whatever has been presented in defendant's behalf in the most favorable light, including the fact that defendant has no prior adjudicated record, the minimum penalty I can impose is suspension of defendant's license for a period of one hundred eighty days. Re Kaczka & Trobiano, supra and cases cited therein.

Accordingly, it is, on this 21st day of June 1955,

ORDERED that Plenary Retail Consumption License C-115, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Albert Bader, t/a Bader's Bar, 2 Main Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m. June 27, 1955; and it is further



ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 3 a.m. December 24, 1955.

William Howe Davis,  
Director.

5. APPELLATE DECISIONS - GRUBER v. NEWARK - AMENDED ORDER.

HARRY GRUBER, trading as	)	
Harry's Wines and Liquors,	)	
	)	
Appellant,	)	On Appeal
v.	)	
	)	AMENDED ORDER
Municipal Board of Alcoholic	)	
Beverage Control of the City	)	
of Newark,	)	
	)	
Respondent.	)	

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Edmond J. Dwyer, Esq., Attorney for Appellant.  
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

Pursuant to leave granted in Conclusions and Order heretofore entered herein, appellant has filed a verified petition requesting that the order herein be amended to provide merely for a reversal of the action of respondent.

Accordingly, it is, on this 22nd day of June, 1955,

ORDERED that the Order heretofore entered herein be and the same is hereby amended to read as follows:

"ORDERED that the action of respondent in denying appellant's application to transfer his license to 121 Belmont Avenue, Newark, be and the same is hereby reversed."

William Howe Davis,  
Director.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1088

NOVEMBER 22, 1955.

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Proper liquor control dictates that an issuing authority should be free, within the confines of sound discretion, to determine the fitness of a person to hold a license and where, as here, the record substantially supports applicant's fitness, it cannot be said that the issuing authority has abused that discretion. Cf. Burgard and Condon v. Totowa, Bulletin 900, Item 5.

The burden of establishing that respondent's action was erroneous and should be reversed rests with appellants (Rule 6 of State Regulations No. 15). Having carefully considered all the facts and circumstances of the case, including oral arguments before me of counsel for the respective parties herein, I find that appellants have failed to sustain that burden. The action of respondent Board will be affirmed.

Accordingly, it is, on this 24th day of October, 1955,

ORDERED that the action of respondent Board be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS, INDECENT FIGURINE) - ALLOWING PREMISES  
TO BE CONDUCTED AS A NUISANCE - LICENSE SUSPENDED FOR 190 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

LOUISE G. MACK )  
T/a ENTERTAINER'S CLUB )  
169 Westminster Avenue )  
Atlantic City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-14, issued by the )  
Board of Commissioners of the City )  
of Atlantic City. )

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McAllister & Hunter, Esqs., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against defendant:

"1. On June 3, 18, 21, 22, 24, 25, 29 and 30, 1955 you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you permitted persons who appeared to be homosexuals to congregate on your licensed premises and to engage and participate in foul, filthy and obscene language and conduct and to mingle with, solicit and make overtures for and arrangements with patrons for acts of perverted sexual relations and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.

"3. On June 30, 1955 and prior thereto you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing an obscene, indecent, filthy, lewd, lascivious and disgusting representation, viz., a certain rubber figure known as 'Bubbling Boy'; in violation of Rule 17 of State Regulations No. 20."

Defendant pleaded not guilty to said charges and on September 13, 1955 a hearing was held thereon. In view of the fact that the matter was not completed on said date, it was continued to October 27, 1955.

A letter dated October 24, 1955 from defendant's attorneys, and received at this Division on October 25, 1955, represented that defendant requested permission to withdraw her plea of not guilty heretofore entered and that in place thereof a plea of non vult be entered to said charges. I shall allow such change of plea to be entered herein.

The file herein discloses that several ABC agents visited defendant's licensed premises on the various dates set forth in the charges preferred herein. All of the visits were in the evening, sometimes extending into the early morning of the following day, with the exception of one visit made on June 18, 1955 when the agents entered defendant's premises at 12:01 a.m. It would serve no useful purpose to recite in detail all of the sordid facts and circumstances contained in the agents' reports. I shall, however, mention the significant events and conduct occurring on the visits in question.

The agents visited the defendant's licensed premises for the first time on June 3rd and during their stay observed that practically all of the male patrons, who numbered 50 at one time, although dressed generally in male attire, deported themselves in a feminine manner by swaying their hips while walking and speaking in high-pitched voices. The defendant discussed "gay boys" with the agents and related how a well-known actress was arrested at one time with a number of such "boys." The agents and the male bartender engaged in conversation about "gay boys" and the bartender told them he could obtain some for them in a house which catered to such males and that "straights" (normal males) were not welcome in defendant's licensed premises.

The agents again visited the defendant's premises on June 18th and during that evening about 80 male patrons with feminine characteristics and speaking in high-pitched voices patronized the establishment. Several of these males wore tight-fitting dungarees and swayed their hips as they walked. Some of the male patrons, during the playing of the juke box, shook the lower parts of their bodies in time with the music. Loud comments from observers were heard, such as, "Isn't she just the sexiest thing" and "I wouldn't mind being married to someone who could move like that." One male sat on the lap of his male companion and began to kiss him and when the defendant saw this she remarked "I don't think that's necessary. I told them before not to be kissing like that in public." Many pairs of males walked about the premises holding hands and on occasion were heard to make such remarks to one another as "silly girl" and refer to others as "she" or "doll."

The agents again entered defendant's premises on June 21st and during the evening observed conduct similar to that observed on their prior visits and, in addition thereto, heard two males discussing the different ways to engage in homosexual love-making.

On the June 24th visit by the agents, they observed at the height of activity that there were about 60 male patrons in

the premises similar to those seen on previous occasions. Some time after the agents arrived, a male called Johnny engaged one of the agents in conversation and asked the agent whether he was "going steady" with his fellow agent, and, thereafter, when the agent signified his intention of leaving the premises with the other agent, Johnny said he was disappointed that he was not going with him.

When the agents returned to defendant's premises on June 29th, there were approximately 50 males in the place. A short time after they entered, a male called Danny, wearing tight-fitting slacks and female ballerina slippers, and walking in a feminine manner, approached one of the agents and said the latter "looked just like a doll." He requested that the agent buy a drink for him and while awaiting the service thereof, the male became unduly familiar with the agent. Danny took a pair of false eyelashes from a plastic box and, after putting them on, asked the agent if they did not make his look "sexy." He then took these off and handed them to the defendant. Another male called "Phil," who acted in a very affectionate manner toward Danny, told Danny that he was going to bed with him that night, reminding him that "after all we are going steady." Another male called "Herb" came over to one of the agents and maneuvered his body between the agent's legs and put his arm around him and at one time kissed the agent on the neck. Herb then invited the agent to go to his home with him, saying that he had a comfortable bed and that on the following day both could meet friends on the beach. While Herb went to the men's room, the agent told his fellow agent about the invitation extended by Herb and, in response to their inquiry of the bartender and the defendant concerning Herb, both indicated Herb was all right.

When at 3:00 a.m. on June 30th, the agents made known their identity to the licensee and her employees, all refused to give any statements in the matter.

During a search of the premises a rubber figurine, which could be manipulated to emulate a call of nature, was found on the back bar.

The offenses above enumerated are major violations of the Rules and Regulations of the Division of Alcoholic Beverage Control upon which the charges herein are brought. As was said in Re Kaczka et al., Bulletin 1063, Item 1:

" \* \* \* \* it is clear that homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in the manner hereinbefore related, they are a threat to the safety and morals of the public.. \* \* \* "

It appears from the evidence in the instant case that the defendant not only knew that her establishment was patronized by homosexuals, but that she encouraged and catered to them to the exclusion of other patrons. Considering the number and type of violations which took place on her licensed premises during the course of the investigation in question with reference to Charges (1) and (2), a 180-day suspension of the defendant's license is warranted. Re Bader, Bulletin 1073, Item 4. An additional 10-day suspension of defendant's license on Charge (3) will be imposed because of the violation set forth therein. Re Jackson, Bulletin 1023, Item 2. This makes a total suspension of defendant's license for a period of 190 days.

Accordingly, it is, on this 2nd day of November, 1955,

ORDERED that Plenary Retail Consumption License C-14, issued by the Board of Commissioners of the City of Atlantic City to Louise G. Mack, t/a Entertainer's Club, 169 Westminster Avenue, Atlantic City, be and the same is hereby suspended for a period of one hundred ninety (190) days, commencing at 7:00 a.m. November 14, 1955, and terminating at 7:00 a.m. May 22, 1956.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES TO RENT  
ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - MITIGATING CIRCUMSTANCES -  
LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

TARQUINIO ROSSINI )  
19 Union Square )  
Phillipsburg, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-19 for the 1954-55 )  
and 1955-56 licensing years, issued )  
by the Board of Commissioners of the )  
Town of Phillipsburg. )

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Joseph V. De Masi, Esq. and Sidney Simandl, Esq., Attorneys  
for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to the following  
charge:

"On June 4 and 8, 1955, you allowed, permitted and  
suffered lewdness and immoral activity in and upon your  
licensed premises, viz., the making of arrangements for  
the renting and the renting of rooms for the purpose of  
illicit sexual intercourse; in violation of Rule 5 of  
State Regulations No. 20."

The file herein discloses that on the night of June 4,  
1955, three ABC agents visited defendant's licensed premises  
wherein they observed a sign reading "Rooms for Rent." At about  
11:20 p.m. they engaged the bartender named Paul in conversation  
respecting the type of rooms available and the rental therefor  
and told him, in the vernacular, that they proposed to have mere-  
tricious relations with some married women from a nearby city.  
Meanwhile, one of the agents pretended to phone the women and  
thereafter told Paul and the other agents that the "girls" would  
call back within ten minutes. In response to the agents'  
inquiries, Paul assured them that luggage was not essential;  
that they could sign "whatever you want" in the register; and,  
to assuage their seeming concern for the womens' anonymity, told  
them the "girls" could be brought, unobserved, through the lobby  
to the rooms. After fifteen minutes had elapsed and the phone  
call was not received, the agents departed after instructing Paul  
what to do in the event the "girls" should later phone.

On the night of June 8, 1955, the aforesaid agents again  
visited defendant's licensed premises and after greeting Paul,  
asked him if any rooms were available. When informed that they

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1112

MAY 16, 1956.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1112

MAY 16, 1956.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS - INDECENT SONGS) - SALES TO MINORS -  
LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

COPA CLUB, INC.  
145-147 Front Street  
Secaucus, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-33, issued by the  
Town Council of the Town of  
Secaucus.

-----  
Copa Club, Inc., Defendant-licensee, by Michael Warianka, Jr.,  
President.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that  
(1) it permitted and suffered a female impersonator on its  
licensed premises; (2) it sold, served and delivered alcoholic  
beverages to a minor and permitted the consumption of such bever-  
ages by said minor on its licensed premises; (3) it permitted  
and suffered lewdness and immoral activities on its licensed  
premises; all in violation of State Regulations No. 20.

The file herein discloses that on the nights of March  
10 and 11, 1956, and on the nights of March 17 and 18, 1956,  
ABC agents visited defendant's licensed premises wherein, on  
each occasion, a large gathering of patrons of both sexes were  
being entertained by a six-piece male orchestra under the leader-  
ship of Michael Warianka, Jr., president of the corporate licen-  
see herein. On their first visit the agents observed one of the  
musicians in female attire engage in a pantomime with a fellow  
musician on the stage. On their second visit the agents heard  
the same male musician, now in padded house-dress and wearing a  
wig, sing an indecent parody of a popular song to a guitar player.  
Thereafter another performer sang a double entendre song to a  
couple celebrating their wedding anniversary. At about 1:00 a.m.  
on March 18, 1956, the agents observed a waitress serving an alco-  
holic drink to an apparent female minor to whom, after she had  
consumed some of the beverage, they made their identities known  
and obtained from her a signed sworn statement in which she  
identified herself as Joan --- (age 18) and stated that she had  
consumed four or five drinks of whiskey and soda which were  
served to her by the waitress who made no inquiry as to her age.  
The impersonator and the waitress admitted their participation  
in the respective violations but Warianka refused to give a  
statement.

Defendant has no prior adjudicated record. The per-  
formances which resulted in Charges 1 and 3 have no place and  
will not be tolerated on licensed premises. Rigid enforcement  
of the regulations pertaining thereto is essential to the  
preservation of decency and public morals. I shall suspend  
defendant's license for thirty days on Charges 1 and 3 (cf.



Re Louis O. Palma, Inc., Bulletin 1067, Item 3). As to Charge 2, the usual penalty heretofore imposed for an unaggravated sale of alcoholic beverages to an eighteen-year-old minor was ten days (Re Sylvester, Bulletin 1080, Item 4). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days (Re Increased Penalties, Bulletin 1095, Item 1). Since the violation in the instant case occurred after that announcement, I shall suspend defendant's license for an additional period of fifteen days on Charge 2, making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days for the three violations.

Accordingly, it is, on this 6th day of April, 1956,

ORDERED that Plenary Retail Consumption License C-33, issued by the Town Council of the Town of Secaucus to Copa Club, Inc., for premises 145-147 Front Street, Secaucus, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. April 13, 1956, and terminating at 2:00 a.m. May 23, 1956.

WILLIAM HOWE DAVIS  
 Director.

2. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS -  
 LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

BELLA Wm. MARRILLO )  
 t/a PLAZA RESTAURANT )  
 White Horse Pike )  
 Waterford Township )  
 PO Atco, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consump- )  
 tion License C-7, issued by the )  
 Township Committee of the Township )  
 of Waterford. )

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 Robert T. Healey, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that she sold, served and delivered alcoholic beverages to twelve minors and permitted the consumption of such beverages by said minors in and upon her licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that at about 12:50 a.m. March 10, 1956, ABC agents visited defendant's licensed premises wherein they observed twelve apparent minors consuming alcoholic beverages served to them by the licensee. The agents made known their identities and obtained signed sworn statements from the youths who identified themselves as Thomas --- (age 16), Richard --- (age 16), William --- (age 16), Robert --- (age 17), Rodrick --- (age 17), Ronald --- (age 17), Frederick --- (age 17), Roland --- (age 17), James --- (age 17), Andrew --- (age 18), Manfred --- (age 19) and James H. --- (age 20). The statements show that James, Andrew and Roland were each served two drinks of

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 5, N. J.

BULLETIN 1133

OCTOBER 8, 1956.

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2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS - OBSCENE LANGUAGE AND CONDUCT) -  
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

RUTGERS COCKTAIL BAR, A CORP. )  
29 Albany Street )  
New Brunswick, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-85, issued by the )  
Board of Commissioners of the City )  
of New Brunswick. )  
-----)

Eber & Eber, Esqs., by Alex Eber, Esq., Attorneys for  
Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On November 18, December 3, 4, 16 and 17, 1955,  
you allowed, permitted and suffered your licensed place  
of business to be conducted in such manner as to become  
a nuisance in that you allowed, permitted and suffered  
female impersonators and persons who appeared to be  
homosexuals in and upon your licensed premises; allowed,  
permitted and suffered lewdness and immoral activity and  
foul, filthy and obscene language and conduct in and  
upon your licensed premises; and otherwise conducted your  
place of business in a manner offensive to common decency  
and public morals; in violation of Rule 5 of State Regu-  
lations No. 20."

At the hearing herein, on application of the Division,  
any alleged violation occurring on December 17, 1955 was deleted  
from the aforementioned charge.

In support of the charges, three ABC agents testified  
with respect to investigations conducted at defendant's licensed  
premises on the dates in question (except December 17, 1955).  
The following is a summary of their testimony:

On the night of November 18, 1955 two of the agents  
entered defendant's licensed premises to investigate a specific  
complaint that the licensed premises was a "hangout for Lesbians  
and queers". At that time there were 15 apparent males and five  
apparent females upon the licensed premises. The agents testi-  
fied that the apparent males spoke in high-pitched voices,  
walked in "a feminine manner, swaying their hips and making  
gestures with their hands", and handled their drinking glasses  
and cigarettes in an effeminate manner. They described the  
apparent females as being dressed in a mannish manner, men's  
dungarees and shirts, having short haircuts and wearing no  
makeup. Some of them wore wide men's belts with large buckles.  
One of these females, described as "chunky" and "heavy-set",  
was seated at a table with a blond-haired female called Cheryl  
and was seen to rub with her hand the latter's thigh and  
"privates". Shortly thereafter, Cheryl proceeded to the ladies'  
room, followed by the aforementioned female, where they remained  
for twenty-three minutes and then returned to their seats at the  
table where the same female again rubbed Cheryl's thigh and  
"privates" with her hand.

The agents further testified that when they returned to defendant's barroom on December 3, 1955, they again saw a number of males who were dressed and comported themselves in the same effeminate manner as had the patrons on their prior visit. They also testified that there were five females similarly garbed in mannish attire as on their previous visit, all being seated at a table. When two of these females left the licensed premises together one of the agents said to the bartender, "Looks like they're going out for a quickie." The bartender merely shrugged his shoulders and moved away from the agents. Shortly thereafter, one of the agents asked the bartender whether only "queers and Lesbians hang out" at the licensed premises, to which he replied, "I don't know, I'd like to find out myself." At one time during the evening, there were 30 apparent males and seven apparent females in the barroom and the agents testified that at least 70% of the males appeared to them to be homosexuals.

Two of the agents testified that, shortly after midnight on December 4, 1955, a woman and a man became involved in a violent argument, during the course of which each used filthy and indecent language (the repetition of the words used would serve no useful purpose); that the woman challenged the man to leave the licensed premises to engage in fisticuffs with her, which challenge he accepted; that a short time thereafter both the woman and the man returned to the licensed premises and continued the use of vile and indecent epithets toward each other; that, although the argument continued for some time on the first occasion and also for some time when the couple re-entered the premises, the bartender made no attempt to stop this sordid exhibition; and that the bartender engaged in conversation with the agents, during which time he remarked, "Well, he got himself into that, now let him get himself out of it."

All three agents testified with respect to their visit of December 16, 1955 and referred to the actions of the apparent male patrons as being effeminate in nature, particularly with respect to their gestures and the manner in which they touched each other's persons. When a man and woman left the premises together, the bartender volunteered to the agents that the woman would engage in sexual intercourse but denied, upon being questioned by one of the agents, that he had ever had intercourse with her. Continuing the conversation, one of the agents asked the bartender whether only "queers and Lesbians hang out" in the licensed premises and further asked whether the bartender had much trouble from the "fags and Lesbians". He replied, "No, I get more trouble from the straights." The agent then referred to his previous visit where two females remained in the ladies' room together for twenty-three minutes and implied that they apparently went there for unnatural sexual relations. The bartender replied, "What else?", and then stated that two women who used to frequent the premises always kept their hands under the table and he always wondered what they were doing. He further stated that some day he was going to find out why they stayed in the ladies' room for such a long period of time. When asked by one of the agents whether a man could "score with those broads" the bartender replied that it might be possible if the women came in alone but not if they came in together. One of the agents further asked the bartender how often "these Lesbians and queers come in", to which the bartender replied, "Oh, about four or five nights a week." At another time, in answer to a somewhat similar question, the bartender replied that he did not know, saying, "I don't pay much attention."

On behalf of defendant, the aforementioned bartender, the majority stockholder of defendant licensee corporation, a male patron, a female patron, a psychiatrist and a police officer appeared and testified.

With respect to the alleged foul language, the bartender testified that he had attempted to stop the argument during which such language was used. He denied that there was anything unusual in the conduct of the patrons. While he admitted that some of the female patrons wore men's trousers and shirts and had mannish haircuts, he said that he saw nothing wrong in that. With respect to the male patrons, he testified that "some swished, some wobbled, some walked quiet, some made a lot of noise." As to their manner of drinking, he testified that they looked to him like gentlemen, pretty well educated people, not "riffraff", and that the manner in which they drank was "very delicate." He denied any conversations with the agents with respect to "Lesbians and queers" and claimed that he did not even know the meaning of the words.

The majority stockholder testified that all of his patrons were decent people and, while he admitted that most of the female patrons wore dungarees instead of dresses, he denied permitting any immoral activity, female impersonators or persons who appeared to be homosexuals upon the licensed premises. He admitted, however, that he had no specific recollection of the dates in question.

The female patron (referred to as "chunky" and "heavy-set") testified that she is not a Lesbian and that she does not know any Lesbians who frequent defendant's licensed premises. She admitted that, when she goes to defendant's licensed premises, she wears men's pants and shirts and a man's watch. She further admitted the aforementioned argument and the use of the foul language, as hereinabove set forth. She denied that she had ever seen any female rubbing the thigh or "privates" of any other female upon the licensed premises but claimed that massaging tends to relieve discomfort which accompanies menstruation. She also testified that on one occasion she and three other females stayed in the ladies' room for a half-hour because one of them was ill.

A male patron testified that he is not a homosexual and denied that he was aware of any improper conduct or undesirable persons who frequent defendant's licensed premises.

A police officer testified that on his numerous visits to defendant's licensed premises he had not observed any objectionable persons or conduct.

The psychiatrist (who appears to be well qualified as such) testified that one cannot tell a homosexual merely by his appearance or actions. He further testified that homosexuals, both male and female, frequently have the appearance of normal members of their sex. He admitted, however, that some homosexuals affect the mannerisms of the opposite sex, but reiterated that the average homosexual has a deceptive appearance. When asked whether the appearance and conduct of defendant's patrons, as recounted by the agents, would not lead to the conclusion that these persons were homosexuals, he testified that he could not, on that basis, arrive at that conclusion.

The Hearer in this matter filed a report in which he stated that, while the actions and mannerisms of many of

defendant's patrons on the dates in question might arouse suspicion, such suspicion is not a substitute for the quantum of proof necessary for a finding of guilt, citing Re Doyle, Bulletin 469, Item 2; Re The Torch (A Corp.), Bulletin 945, Item 5, and Re Fireside Tavern, Inc., Bulletin 991, Item 5. He then recommended that defendant be found guilty only on that portion of the charge which alleged that it allowed, permitted and suffered foul, filthy and obscene language in and upon its licensed premises.

Thereafter, pursuant to Rule 6 of State Regulations No. 16, the prosecuting attorney in this matter filed exceptions and argument contending that, since the gravamen of the charge is nuisance, the testimony of the agents, unshaken by extensive cross-examination by counsel for defendant, left no doubt that many of the males were female impersonators and that they and a group of females who frequented the premises from their very actions appeared to be homosexuals. Accordingly, he contended that defendant should be found guilty on the entire charge, and proceeded to distinguish the cases cited by the Hearer.

Counsel for defendant filed exceptions and argument in which he stated that the Hearer's conclusions were supported by the preponderance of the uncontroverted evidence and were within the framework of the Director's decisions, and expressed disagreement with the prosecuting attorney's contention that the nuisance charge had been established in its entirety. He stressed certain isolated portions of the agents' testimony tending to indicate that the conduct of the patrons was not obnoxious, annoying or offensive and argued that, therefore, no nuisance had been established. He restated his position in oral argument before me.

I have carefully considered the entire record in this case, including the transcript of testimony, the Hearer's Report and the exceptions and arguments of counsel. Obviously, all of the testimony must be considered in its entirety and in context, not in segments, out of context.

I shall sustain the exceptions filed by the prosecuting attorney for the reason that, in my opinion, defendant's guilt on the basic nuisance charge has been established by a clear preponderance of the evidence. More specifically, while the record discloses that the only apparent overt acts of lewdness and immoral activity upon the licensed premises were committed by the above mentioned female patron, nevertheless it clearly appears that (1) a large percentage (approximately 70%) of the male patrons were obviously homosexuals as indicated by their appearance and actions, including their manner of speech, their walk, gestures and other mannerisms, and (2) some of defendant's female patrons "appeared to be homosexuals."

The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than mere coincidence and, notwithstanding the testimony of the learned psychiatrist that a layman could not tell a homosexual from a normal individual, I am satisfied from all of the evidence that the male persons in question were what are commonly termed "female impersonators." Female garb is not necessary for such a finding. Re Kaczka and Trobiano, Bulletin 1063, Item 1.

Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of female impersonators or homosexuals in large numbers on licensed premises be staunchly prohibited. The situation disclosed by the record in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulations No. 20 as alleged in the charge. To permit such persons to gather and congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Re Kaczka and Trobiano, supra.

I find defendant guilty of allowing, permitting and suffering its licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20.

A liquor license is a mere privilege, Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N. J. 498 (1954) and, as Judge Freund, speaking for the Court in Benedetti v. Trenton, 35 N. J. Super. 30, 35 (1955), said:

"In the public interest, the right to prescribe the conditions under which intoxicants may be sold is practically limitless."

Judge Jayne, speaking for the Court in In re 17 Club, Inc., 26 N. J. Super. 43, 52 (App. Div. 1953), said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

As I have previously pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6; Re Lloyd, Bulletin 1045, Item 7, and Re Kaczka and Trobiano, supra:

"...rigid enforcement of the regulations ..., is essential to the preservation of decency and the protection of the public morals ..."

and

"degradation and depravity which constitute so serious a threat to the public welfare and morals, will not be tolerated upon the licensed premises and ... such premises cannot be permitted to become havens for deviates or persons of low morality."

Defendant has no prior record. Under all of the circumstances in this case I shall suspend defendant's license for sixty days.

Accordingly, it is, on this 11th day of September, 1956,

ORDERED that Plenary Retail Consumption License C-85, issued by the Board of Commissioners of the City of New Brunswick to Rutgers Cocktail Bar, A Corp., for premises 29 Albany Street, New Brunswick, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. September 20, 1956, and terminating at 2:00 a.m. November 19, 1956.

WILLIAM HOWE DAVIS  
Director.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1145

JANUARY 7, 1957.

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New Jersey State Library



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1145

JANUARY 7, 1957.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS) - LICENSE SUSPENDED FOR 100 DAYS.

In the Matter of Disciplinary  
Proceedings against

LOUIS FELDMAN  
T/a NEW TORCH CLUB  
1317 Memorial Ave. & 28 Hahn Ave.  
Atlantic City, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-108, issued by the Board  
of Commissioners of the City of  
Atlantic City.

-----  
Paul M. Salsburg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On July 28 and 29, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that ABC agents visited defendant's licensed premises on the early morning of July 28 and July 29, 1956, and on each visit remained in the premises for several hours.

On the morning of July 28, 1956, the agents observed between ninety and one hundred male and three female patrons in the premises. The agents report that practically all of the male patrons (99%) talked and acted like "fags" as they were observed hugging and kissing one another and performing other suggestive acts repugnant to common decency. Although two male bartenders were on duty at the time, neither they nor a female who appeared to act in a managerial capacity did anything to stop the sordid exhibition.

On the morning of July 29, 1956, the agents again visited the said premises and found the same conditions existing as had taken place on their visit on the previous day. On this occasion there were approximately one hundred males present, all of whom appeared to be homosexuals. On both mornings the "fags" wore male attire.

Defendant has no prior adjudicated record. In attempted mitigation of penalty defendant's attorney contends that the defendant had no knowledge of the fact that such conduct took place as he has another business which prevents him from being

in regular and constant attendance in the licensed premises. The licensee's lack of knowledge cannot be excused, particularly where, as here, he absents himself from the licensed premises and for appreciable periods of time leaves the management of the licensed premises to another, thus substantially abandoning supervision over the licensed premises; nor can such lack of knowledge save him from the full impact of the merited penalty. I suggest, if the licensee values his license privileges, that he personally devote requisite time to the supervision and operation of his premises.

Under the circumstances appearing herein, I shall suspend defendant's license for a period of one hundred days (cf. Re Lloyd, Bulletin 1045, Item 7).

Accordingly, it is, on this 31st day of October, 1956,

ORDERED that Plenary Retail Consumption License C-108, issued by the Board of Commissioners of the City of Atlantic City to Louis Feldman, t/a New Torch Club, 1317 Memorial Ave. & 28 Hahn Ave., Atlantic City, be and the same is hereby suspended for a period of one hundred (100) days, commencing at 7:00 a.m. November 5, 1956, and terminating at 7:00 a.m. February 13, 1957.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - ALLOWING OBSCENE LANGUAGE AND CONDUCT ON LICENSED PREMISES - SALES TO MINORS - SALE TO INTOXICATED PERSONS - UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

DOROTHY MOSCATO  
T/a GRAND ALLEYS  
1304 - 5th Street  
North Bergen, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-33, issued by the  
Alcoholic Beverage Control Board  
of the Township of North Bergen.

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Irving I. Vogelmann, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On July 11, 13, 14 and August 16, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that on July 11, 13 and 14, 1956 you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct and unnecessary noise in and upon your licensed premises and had in your possession matter containing an indecent, filthy, lewd, lascivious and disgusting representation, viz., a certain rubber-like figure known as the 'Mermaid'; in that on August 16, 1956, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing an indecent, filthy, lewd, lascivious and disgusting

# THE NEW TORCH CLUB

New Jersey Division Of Revenue Business Registration · Updated 1/27/2016

Sponsored Links

## Company Information

Company Name:	<a href="#">THE NEW TORCH CLUB</a>
Entity Type:	NEW JERSEY TRADE NAME
File Number:	<a href="#">535370</a>
Filing State:	New Jersey (NJ)
Filing Status:	Unknown
Filing Date:	November 21, 1944
Company Age:	78 Years, 5 Months
Principal Address:	 Atlantic City, NJ 08404
Governing Agency:	New Jersey Division of Revenue

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1159

APRIL 3, 1957.

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8. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1159

APRIL 3, 1957.

1. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS PERMITTED ON PREMISES) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

CLOVER LEAF INN, INC.  
T/a CLOVER LEAF INN, INC.  
n/s Black Horse Pike  
Hamilton Township  
PO RD 1, Mays Landing, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton.

-----  
Cahill and Wilinski, Esqs., by William T. Cahill, Esq.,  
Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendant pleaded not guilty to the following charge:

'On June 8, 9, 16, 22 and 23, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered male and female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"At the hearing held herein an ABC agent testified that he, accompanied by other ABC agents, visited defendant's premises on the evenings of June 8, 1956, June 16, 1956, and June 22, 1956, and that on the first and third visits he and the agents who then accompanied him remained on the premises until the early hours of the following morning.

"The agent testified that he and two other agents entered the premises on June 8, 1956, at about 11:30 p.m. and took seats at the bar; that Joy Rex was acting as bartender; that he observed six females in groups of two; that all were dressed in slacks and blouses and that one in each group had facial make-up whereas the other had no make-up and appeared to impersonate a male.

"The agent further testified that he and another agent entered the premises on June 16, 1956, shortly after midnight and took seats at the bar; that he observed two females, identified as 'Renee' and 'Freddie' at the bar; that 'Renee' was dressed in female attire but that 'Freddie' was

dressed in slacks and a blouse and wore no make-up; that these two females danced together and that during the dance 'Freddie' kissed 'Renee' on the neck; that Joy Rex (the bartender) told him that 'Renee is Freddie's girl friend.' He further testified that five other females came in together; that three had make-up whereas the other two had no make-up and that the three took turns dancing with the other two; that, later, two males, who appeared from their talk to be homosexuals, entered the premises.

"The agent further testified that he and other agents entered the premises on June 22, 1956, at about 11:30 p.m. and took seats at the bar; that two females (one with make-up and one without make-up) danced together; that three females (including one called 'Betty' and another called 'Mickey') joined this group; that Joy Rex (the bartender) told the agent that 'Betty is Mickey's girl friend and goes out with her' and 'that most of our customers are gays and Lesbians. We get a few straights;' that two male couples, who acted in an effeminate manner, were also on the premises. The agents identified themselves about 1:15 a.m. to the bartender who then said to the agents 'I can't distinguish the difference between a gay and a straight. How am I supposed to know?'

"On cross-examination the agent admitted that the premises were open to the public; that patrons other than those described by him entered the premises during his visits, and that there was no evidence of any immoral activity other than that set forth above.

"It was stipulated that, if the other agents were called to testify, they would testify in substantially the same manner concerning the conditions they observed on their respective visits.

"On behalf of defendant, Helen N. Palma testified that she is treasurer of defendant corporation and that her husband, Louis Palma, president of the corporation, was then confined to a hospital. She testified that the corporation has been operating the licensed business about one and one-half years; that neither she nor her husband has been able to devote much time to the business; that Miss Rex 'came with the business' and continued to work for the corporation; that some people who came in 'acted very oddly, but as long as they conducted themselves in proper manner we didn't eject them from the premises.'

"After reviewing all the testimony I find that the licensee, by its agent, allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon the licensed premises. Proper liquor control dictates that the congregating of such persons on licensed premises must be staunchly prohibited. Under the circumstances I recommend that defendant be found guilty as charged. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.

"Defendant has no prior record. Under all the circumstances of this case I further recommend that the license of defendant be suspended for sixty days. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein. I shall suspend defendant's license for sixty days.

Accordingly, it is, on this 13th day of February, 1957,

ORDERED that Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton to Clover Leaf Inn, Inc., t/a Clover Leaf Inn, Inc., for premises on n/s Black Horse Pike, Hamilton Township, be and the same is hereby suspended for sixty (60) days, commencing at 4:00 a.m. February 18, 1957, and terminating at 4:00 a.m. April 19, 1957.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS PERMITTED ON PREMISES) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

THE PADDOCK BAR, INC.  
T/a PADDOCK BAR  
810-812 Cookman Avenue  
Asbury Park, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-31, issued by the  
City Council of the City of  
Asbury Park.

-----)  
Braun and Hoey, Esqs., by Henry F. Hoey, Jr., Esq., Attorneys  
for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charge:

'On April 6, 7, 8, 21 and 22, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in large numbers in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"Three of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth, the full names of the agents will not be used but, instead, the initial letter of the last name, 'M', 'R' and 'D'.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1159

APRIL 3, 1957.

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7. DISCIPLINARY PROCEEDINGS (Atlantic City) - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. STATE LICENSES - NEW APPLICATION FILED.



After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein. I shall suspend defendant's license for sixty days.

Accordingly, it is, on this 13th day of February, 1957,

ORDERED that Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton to Clover Leaf Inn, Inc., t/a Clover Leaf Inn, Inc., for premises on n/s Black Horse Pike, Hamilton Township, be and the same is hereby suspended for sixty (60) days, commencing at 4:00 a.m. February 18, 1957, and terminating at 4:00 a.m. April 19, 1957.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS PERMITTED ON PREMISES) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

THE PADDOCK BAR, INC.  
T/a PADDOCK BAR  
810-812 Cookman Avenue  
Asbury Park, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-31, issued by the  
City Council of the City of  
Asbury Park.

-----)  
Braun and Hoey, Esqs., by Henry F. Hoey, Jr., Esq., Attorneys  
for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

charge: "Defendant has pleaded not guilty to the following

'On April 6, 7, 8, 21 and 22, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in large numbers in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"Three of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth, the full names of the agents will not be used but, instead, the initial letter of the last name, 'M', 'R' and 'D'.

"Agent 'M' testified that he and Agent 'D' entered defendant's licensed premises at 10:10 p.m. on April 6 and left the premises at 12:20 a.m. on April 7, 1956; that they again visited defendant's licensed premises at 10:20 p.m. on April 7 and departed at 12:55 a.m. on April 8, 1956; that on the April 6 visit, a man called John (subsequently identified as John Iannicelli) was tending bar and a woman (subsequently identified as Marion Brown, president of defendant corporate-licensee) sat at the bar and at times spoke to divers patrons; that at all times there were about twenty patrons in the premises during the evening, six of whom 'spoke in higher than normal tones, they held their cigarettes on the very tips of their fingers, they walked with a swaying of the hips and they giggled and carried on in an effeminate manner'; that during the course of the evening, Agent 'D' obtained a book of matches from the bartender (marked as an exhibit in evidence in the instant case) whereon, among other things, was printed the name and address of the defendant-licensee and the statement that the establishment was 'The Gayest Spot in Town'. Agent 'M' further testified that on the evening of April 7, John was again tending bar and Marion Brown was also in the premises; that on this occasion, at the height of the evening, there were in the premises about fifty males and two female patrons, the latter of whom 'had short-cropped haircuts, one was dressed in a mannish-type trench coat, wore a man's wrist watch and a man's identification bracelet'; that about forty of the male patrons 'spoke in higher than normal tones; walked in a swaying of the hips; combed their hair in a feminine manner in which they would hold a comb in one hand and fix the curls or place the hair with the other hand; they congregated in small groups and giggled loudly very much the way females would do'; that many of them referred to each other as 'Honey, Doll and Baby'; that 'One of these apparent homosexuals said to another, "They're not all married, you know. The single ones will be in later. My Albert will be in later". Another remark heard was, "Wrap your lips around this". A young sailor walked into the place and a male made a remark to another male and this male replied, "He's gay but he's young". This male made another remark and the first male said, "Oh, he doesn't go for that".' During cross-examination, Agent 'M' reiterated the actions which he observed on the occasions in question and further testified in answer to questions asked by the attorney for the defendant that he did not observe any of the patrons conduct themselves in an indecent manner nor did he hear any of them try to make dates with one another to go outside of the premises; that he did not have any conversation with the bartender or Marion Brown to ascertain whether they knew that any apparent homosexuals were in the premises.

"Agent 'R' testified that at 11:00 p.m. on Saturday, April 21, 1956, he and Agent 'D' visited defendant's licensed premises; that John Iannicelli and a man called 'Pat' were tending bar; that Marion Brown and Leo Martin (subsequently identified as the secretary of the defendant corporate-licensee) were in the premises; that there were approximately sixty patrons when he and Agent 'D' entered and that the number of patrons remained constant during the evening; that about forty-five of the patrons appeared to be homosexuals in that '\*\*\* they sat in groups of threes, two, threes and fours and they spoke in a high-pitched voice similar to that of a female; they dressed, they were dressed in male attire but I observed two of them had their collars turned up similar to that which is worn by a female; they held their cigarettes in the manner which I have only seen a female hold it; when they walked they swayed their

hips and in the manner in which their hair was fixed, although it was cut mannish, it appeared to be more or less set; and they congregated in these groups of two, threes and fours; they spoke, my impression they spoke like a woman at a sewing party, giggling and laughing and they held their heads together and at times gave me the impression that if I had closed my eyes, I didn't know I was in the presence of males. I would say I thought I had been among a bunch of females'; that 'on several occasions they referred to each other as Dearie, Doll, Darling'; that he heard a conversation wherein one male said to another male, 'Well, I think I will wait for my husband'; that at midnight two females entered the premises and one said to the other 'It looks like we're the only girls in here'; that the bartender called 'Pat' was standing in front of two men called Sparky and Ralph and in response to the girl's remark, Sparky said, 'No, you're not' and glancing around the place added, 'They're all girls in here'. 'Pat', the bartender, then said to Sparky and Ralph, 'She don't have to be afraid of any of these people in here. The only ones they have to worry about is me, you (referring to Sparky) and you, Ralph' and then said, 'The rest aren't interested'; that he (Agent 'R') said to 'Pat' as he ordered another drink from him 'What are all these guys in here? Queers?' and as 'Pat' looked around he answered, 'Most of them are'; that at 1:00 a.m. on the morning of April 22, he (Agent 'R') identified himself to Leo Martin and Marion Brown and the four, including Agent 'D' proceeded to the kitchen; that in response to his inquiry of Leo Martin concerning the patrons, Martin said that they appeared to him to be homosexuals but he had no knowledge that anyone was ever 'propositioned' by any of the apparent homosexuals and that he had no conclusive evidence that they actually were homosexuals; that he was under the impression that as long as these patrons did not solicit or proposition anyone, it was perfectly all right for them to congregate in the premises; that when questioned about the legend on the match book cover about the place being 'The Gayest Spot in Town', he said he ordered the items but it was a mere coincidence that they referred to the gaiety of the establishment; that when Marion Brown was questioned, she admitted that although the patrons appeared to be homosexuals by their actions, she could not be positive that they were and there posed the question, 'Is it against the law to serve these kind of people?'. On cross-examination, Agent 'R' further testified that no indecent acts were committed on the premises while he was there.

"It was stipulated by the respective attorneys that if Agent 'D' were called by the Division as a witness in this proceeding, his testimony would be similar to that given by Agents 'M' and 'R' when he had accompanied them on their visits to defendant's licensed premises.

"Marion Brown called as a witness on behalf of defendant testified that she was present at the time in question and when the two ABC agents identified themselves and interrogated her with reference to which of the patrons in the establishment were homosexuals, she said, 'I won't say they were and I wouldn't say they weren't'; that 'I couldn't accuse any person of being a homosexual. I wouldn't know definitely'; that she never heard any patron refer to others as 'Honey, Darling or Dear' and 'If I shut my eyes, I would know they were men. I wouldn't say they were a group of women as testified'; that 'Some of our customers have very hearty voices I would say'; that the men patrons are in the majority because the premises is located across the street from the railroad and 'It's more or less a man's bar \* \* \*'; that she never saw anything objectionable nor

did she observe any of the patrons dress or hold cigarettes any different than other men.

"Leo Martin testified that he did not see any person at any time in the establishment on the dates in question who were homosexuals; that he never observed any indecent conduct, heard any endearing terms by any men to others of their sex; that he never had any question in his mind that some of the persons in the establishment on April 21 were other than normal; that he had been in the entertainment business and 'should know'; that he ordered the match books, the covers of which referred to the fact that defendant's establishment was 'The Gayest Spot in Town', from a standard catalogue at the suggestion of the salesman.

"John V. Iannicelli testified that he has been employed for more than three years as a bartender in defendant's licensed premises; that he was present on the dates now under consideration and all the patrons appeared normal to him; that he did not hear any remarks by any person directed toward another expressing terms of endearment; that for the years he worked in the premises he never observed anything on the part of anyone that was indecent; that he did not observe anyone swishing and swaying when they walked nor did he hear giggling; that one is liable to hear loud talk by some patrons in order that they make themselves heard; and that more men than women patronize defendant's establishment because it is primarily a man's bar.

"Four witnesses produced by defendant testified that they are steady patrons of defendant and that at no time when they were in the establishment have they seen any males who appeared to be homosexuals.

"The attorney for the defendant contends in a written memorandum that the charges should be dismissed on technical grounds as a violation of Rule 4 of State Regulation No. 20 should have been alleged rather than Rule 5 of said Regulation because Rule 4 specifically refers to prohibition of 'female impersonators' on licensed premises. I do not agree with such contention because the gravamen of the charge is nuisance which encompasses the type of violation set forth herein. He further stressed that there was no testimony whatsoever to indicate that any overt acts of lewdness and immoral activity took place at any time on the licensed premises. Even though this contention is accurate, nevertheless, it clearly appears from the agents' testimony that a very large percentage of the male patrons were obviously homosexuals as evidenced by their appearance and actions, their manner of speech, walk, gestures and mannerisms.

"The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than a mere coincidence. Proper liquor control dictates that the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.

"I have carefully considered the entire record in this case and the argument of counsel contained in the memorandum filed herein. I have also taken into consideration that no immoral activities or conduct whatsoever took place on defendant's licensed premises. The testimony of the agents attested to that fact. I recommend that defendant be found guilty of allowing, permitting and suffering its licensed premises to be conducted in such manner as to become a nuisance, pursuant to the charge preferred herein.

"Defendant has a prior adjudicated record. Effective September 15, 1947 its license was suspended by the local issuing authority for a period of two days for possession of a mislabeled beer tap. In view of the fact that such dissimilar violation occurred more than five years ago, I recommend that it should not be considered in fixing any penalty that may be imposed herein. Under the facts and circumstances appearing in the instant case, I recommend that the license of defendant be suspended for sixty days. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein. I shall suspend defendant's license for sixty days.

Accordingly, it is, on this 25th day of February, 1957,

ORDERED that Plenary Retail Consumption License C-31, issued by the City Council of the City of Asbury Park to The Paddock Bar, Inc., t/a Paddock Bar, 810-812 Cookman Avenue, Asbury Park, be and the same is hereby suspended for a period of sixty (60) days, commencing at 7:00 a.m. March 4, 1957, and terminating at 7:00 a.m. May 3, 1957.

WILLIAM HOWE DAVIS  
Director.

### 3. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

BAMBOO GARDEN CORPORATION  
3408 Bergenline Avenue  
Union City, N. J.,

Holder of Plenary Retail Consump-  
tion License C-26, issued by the  
Board of Commissioners of the  
City of Union City.

O R D E R

BY THE DIRECTOR:

An order having been entered herein on January 23, 1957, suspending defendant's license for ten (10) days commencing at 3:00 a.m. January 29, 1957, and terminating at 3:00 a.m. February 8, 1957; and

It appearing that, prior to the entry of said order, defendant had accepted bookings for affairs to be held on its licensed premises on January 30, January 31 and February 1; and

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1161

APRIL 22, 1957.

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Accordingly, it is, on this 21st day of February, 1957,

ORDERED that this case be and the same is hereby remanded to the respondent for its further consideration of the application on the basis of the record of the proceedings on appeal before this Division and any additional evidence which may be presented on the question of public need and convenience, the distance from the church and all other issues in the case.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - LICENSED PREMISES CONDUCTED AS NUISANCE (HOMOSEXUALS AND OBSCENE CONDUCT) - AGGRAVATED CIRCUMSTANCES - LICENSE REVOKED.

In the Matter of Disciplinary )  
Proceedings against )

ARTHUR J. KURZ )  
T/a SNUG HARBOR INN )  
Duerer St. & Darmstadt Ave. )  
Mullica Township )  
PO RFD Egg Harbor City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-6, issued by the )  
Township Committee of Mullica )  
Township. )  
----- )

Arthur J. Kurz, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 29 and 30, 1956 and January 5 and 6, 1957, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered male and female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

The reports of ABC agents in the file disclose that the licensee apparently conducted the licensed business exclusively as a "hang-out" for homosexuals and actively encouraged them to carry on their unnatural practices at the licensed premises.

The following specific details of the drastic measures taken by the licensee to exclude normal patronage and the indecent activities of the homosexuals in the licensed premises demonstrate the degradation and depravity which the licensee permitted and welcomed wholeheartedly.

On December 29, 1956 at about 10:30 p.m., an ABC agent and a male companion arrived at defendant's licensed premises. When the licensee who was outside the premises near the door observed these two men, one of whom called to him, he entered the tavern without responding and shut the door. The agent tried the door, found it locked, knocked on the door and it was then opened by the licensee, and the agent and his companion were admitted to a closed-in porch. The licensee said that he had heard the call but that when he steps outside he doesn't acknowledge anyone; that "I can't take any chances". Rose, the licensee's wife, joined the group on the porch. The agent's companion told the licensee and his wife that the agent was "all right". Rose asked the agent to present some identification, which he displayed. She then asked him various questions such as which college he attended, which courses he was taking and where he had met his companion. She finally apologized and said that all newcomers must be checked before they can even sit at the bar. The agent and his companion were then admitted to and took seats at the bar in a small barroom. From this point the agent observed a back room. There were no other patrons at the bar. After being served drinks by the licensee, the agent complimented the licensee on his establishment. The licensee said, "I've got a good thing here. If people come during the day I let them in, but after it gets dark, the door is locked. I check the cars in the lot if I don't recognize them. If a 'straight' (normal person) does happen to sneak in and gets as far as the bar, I charge a couple of dollars for a beer or highball and I insult them, they usually leave quick but nobody gets to the back room to gawk and gape at the boys". To the agent's comment that he was located so far back in the woods that he probably was never bothered by the "law", the licensee responded that he knew all the "law" and that nobody bothered him; that he doesn't advertise it but that he remains open in the morning until the kids in the back room feel like leaving or until he feels that financially it isn't worth staying open any later.

Upon closer inspection the agent observed that the back room appeared to be newly constructed and was equipped with a bar, tables, chairs and a juke box and that there were three pairs of males dancing with each other and about twelve males seated. Rose came to the bar where the agent was seated and during their conversation she remarked that if ABC agents came in she could spot them in a moment and that by the time they got in they have it rigged so that everything would look normal in the back room. Asked if lesbians were admitted, she replied, "No more. I used to but the boys don't like them around and we aim to please the boys". She mentioned other places where homosexuals allegedly had been permitted to congregate and said they were crazy, "They let strangers in and got caught. Now we have all the business and we are running it smart. They will never crack this set-up".

About this time, an apparent homosexual came to the bar from the back room and was introduced to the agent as Bill, an employee of the licensee. Rose told the agent that Bill was "gay". While still seated at the bar Rose remarked, "It gets lonesome out here but you can't get in the back room. Maybe later, the boys are judging you now, I guess. If they like you, I'll take you back later."

Two of the males from the back room came to the door, looked at the agent and his companion and conversed in whispers. Another male also looked at the agent and his companion. Bill



came to the bar, whispered to Rose and left. She then said, "It's all right. I guess you're in" and led the agent and his companion to a table in the back room. The males there were effeminate in manner and spoke in lispy high tones, danced with each other and embraced while so engaged. Several pairs of males were kissing each other on the lips and one male sat on another male's lap, both kissing and embracing for a period of about twenty minutes. Bill insisted on dancing with the agent. A buzzer sounded and Bill walked to a door in the back room, admitted a male, embraced him and told the agent that such male was his sweetheart. There was a knock on the front door, dancing stopped, the males took normal positions and then the licensee came in and said that he did not know who it was and he got rid of him. The males in the room then resumed their dancing and displaying affection for each other.

While dancing with Bill, the agent asked whether Bill could get him a membership card. After some conversation and the licensee's surreptitious observation of the agent's car, Rose and Bill went with the agent to the front bar. There Rose produced two cards. The agent wrote his name and address on one card and was handed the other card with instructions not to write any identification thereon. Rose and Bill showed the agent how the door between the bar and the back room was closed. She said, "See, there is no handle on it and if the law should come in, we can close it and it can only be opened by the buzzer underneath the bar"; further "things have been going very good, by the summer we hope to get several small trailers set up in back so that the boys can go back there rather than go to motels". Rose then pointed out the door in the back room and told the agent that from then on he could come right to the door and press the buzzer instead of bothering to come to the front door. The agent continued to observe the aforementioned conduct of the persons in the back room until about 2:20 a.m. when he left with his companion.

On January 5, 1957 at about 11:55 p.m., the above mentioned agent and a fellow agent gained entrance to the licensed premises by pressing a buzzer at the back room entrance door whereupon Rose opened the door slightly. The agent greeted her and when he observed that she was staring at his companion remarked that they were college mates and that his companion was "all right". The agents entered the back room while Rose was reflecting upon this information. Rose went behind the bar and her husband stood near the bar.

There were eleven males and two females in the room. The males were effeminate in manner, walked with a swinging, swaying motion of their hips and shoulders, talked in high-pitched voices and two pairs of males were dancing with each other. The two females were dressed in general male attire, had short hair, wore no make-up or earrings and by their actions appeared to be Lesbians. The back door buzzer sounded from time to time and either the licensee or Rose admitted various males similar in appearance and conduct to the others and one female, until at one time there were twenty-three males and three females present in the back room. There were no patrons at the front bar.

The males danced with each other, moving very slowly and embracing, some with hands on each other's buttocks and rubbed the lower portion of their bodies together, meanwhile kissing each other on the ears, cheeks and lips. At times they simulated sexual intercourse to music of slow tempo. When dancing with one of the females on infrequent occasions, they danced in a similar manner. Two pairs of males standing at the bar were kissing and embracing each other, eyes closed and

rubbing the lower portion of their bodies against each other.

During the course of their stay, the licensee joined the agents at their table. There was some general conversation about the type of the licensee's business and during this conversation, the licensee explained to the second agent "We do have a perfect set-up here. Everyone is checked and no 'straights' get in to sit around and gape. You'll get a card but we don't give them out freely unless you are highly recommended. You won't get one tonight. You'll have to be judged and after you've been here a few times you may get a card. I am careful. I throw the riff raff and the 'straights' out. You know even 'gays' get noisy at times. Listen this is a business with me and I don't want anything to screw it up. I let the two 'dykes' (indicating the two apparent Lesbians at the bar) in tonight. They can stay as long as they sit there and don't bother the boys".

The licensee further explained that he did not generally allow Lesbians and their girl friends in the place because on occasion they remarked that the males danced with each other and he "threw them out" because the males are very sensitive and didn't like it. While addressing the agents as "you men" the licensee added "or would you prefer 'ladies', most of the boys do". The agents remained in the room until about 1:30 a.m., observing throughout the above described dancing and indecent conduct of the persons present. Thereafter, by prearrangement, other agents and State Troopers entered and disclosed their identities.

A search of the premises by the agents disclosed three index boxes containing a total of 361 male and 80 female names and addresses which Rose stated represented the names of "members"; also 137 brown membership cards (similar to the one issued to the ABC agent) and 203 green membership cards. They also discovered a button underneath the front bar which operated as a warning light in the back room. The licensee stated that the function of this light was to warn persons in the back room that patrons at the front bar were trying to "crash the party".

Clearly the licensee has no proper concept of his duty under the privilege of his license to maintain a minimum standard of conduct of the licensed business and not to bring disrepute upon the liquor industry. The licensee, off the beaten path, may not resort to shady practices to there stimulate or increase his sales of alcoholic beverages.

The distasteful details of what transpired when the ABC agents were at defendant's licensed premises have been set forth at extensive length to forcibly demonstrate that the licensee committed a highly aggravated major violation of the Rules and Regulations of this Division, much more serious than that presented in Re Mack, Bulletin 1088, Item 2, although the violation in that case was also reprehensible.

As was recently stated in Re The Paddock Bar, Inc., "Proper liquor control dictates that the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices."

The outrageous lengths to which the licensee extended himself to carry on these condemned activities represents, as in Re Kaczka, Bulletin 1126, Item 3, a callous disregard for law and order, common decency and his responsibilities as a licensee. Here, as there, the only proper and justifiable penalty is revocation of the license.

Accordingly, it is, on this 7th day of March, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Mullica Township to Arthur J. Kurz, t/a Snug Harbor Inn, Duerer St. & Darmstadt Ave., Mullica Township, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -  
LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

CLUB HI-DE-HO, INC.  
T/a CLUB HI-DE-HO  
Baldwin Ave. & Rte. 46  
(formerly #6)  
Lodi, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-33, issued by the  
Mayor and Council of the Borough  
of Lodi.

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Club Hi-De-Ho, Inc., Defendant-licensee, by Joseph Peraino,  
President.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to five minors and permitted the consumption thereof by said minors on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on Monday night, December 31, 1956 and early Tuesday morning, January 1, 1957, five minors, one of whom was fifteen years, two seventeen years, one eighteen years and one nineteen years of age, purchased a bottle of beer apiece at defendant's licensed premises.

Defendant has a prior adjudicated record. Effective April 26, 1954 its license was suspended for forty-five days for permitting immoral activity and permitting female employees to accept beverages as gifts from customers (Re Club Hi-De-Ho, Inc., Bulletin 1013, Item 2). Effective March 2, 1955 its license was again suspended for thirty-five days for permitting female employees to accept beverages as gifts from customers (Re Club Hi-De-Ho, Inc., Bulletin 1053, Item 4). The minimum penalty for a sale of alcoholic beverages to a fifteen-year-old minor, subsequent to January 16, 1956, is thirty days. Considering that five minors were involved in the instant case, one of whom was fifteen and two seventeen years of age, and the

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1177

JULY 23, 1957.

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New Jersey State Library

"I recommend that an order be entered affirming respondent's action and dismissing the appeal."

Written exceptions to the Hearer's Report, pursuant to Rule 14 of State Regulation No. 15, together with written argument in substantiation thereof were filed with me by the attorneys for the appellant. I have carefully considered the transcript of the testimony herein, together with the Hearer's Report and the exceptions thereto filed by appellant, and I concur in and adopt the recommended conclusions of the Hearer. I shall affirm the respondent's action.

Accordingly, it is, on this 10th day of June 1957,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE -  
PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED  
FOR 240 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Marion Manzo )  
t/a The Casino )  
6 Bank Street )  
Paterson, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-124, issued by the Board )  
of Alcoholic Beverage Control for the )  
City of Paterson. )

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Marion Manzo, Defendant-Licensee, Pro Se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge;

"On February 6, 7, 8, 9, April 3, 12 and 13, 1957 and on divers days prior thereto, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered male impersonators and persons who appeared to be homosexuals in and upon your licensed premises on all such occasions; allowed, permitted and suffered male impersonators and persons who appeared to be homosexuals to frequent and congregate in and upon your licensed premises on all such occasions; allowed, permitted and suffered a female patron to make overtures to and arrangements with a male patron in and upon your licensed premises on February 6 and 7, 1957, for the purpose of illicit sexual intercourse; allowed, permitted and suffered the sale and service to and the consumption of alcoholic beverages by persons actually or apparently intoxicated in and upon your licensed premises on February 6, 7, April 3, 12 and 13, 1957; allowed, permitted and suffered

lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises on all the above stated specific dates; and otherwise conducted your place of business on all the above stated occasions in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Briefly stated, the facts set forth in the file disclose that on the dates alleged in the charge ABC agents visited defendant's licensed premises wherein they observed several female patrons whose mannish attire, mannerisms and display of affection towards one another confirmed the bartender's characterization that they were lesbians. The agents further observed intoxicated persons being served alcoholic beverages, heard male and female habitués indulge in salacious remarks, recognized a known homosexual on the premises and were informed by the bartender that two female loiterers, whom he importuned to join them, were "hustlers" out for drinks who, "when they are in here business picks up real good." The file further discloses that one of the agents was invited by a female patron to "stop around some night along\*\*\*we'll have some fun."

It is deemed unnecessary to detail the unseemly conduct and the foul and obscene language indulged in by many of the patrons on the licensed premises in the presence of the bartender and obviously acquiesced in by Albert Manzo, husband and employee of the licensee, since no useful purpose would be served thereby.

Defendant has no prior adjudicated record. However, when her immediate predecessor and employee, Albert Manzo (her husband), held the license it was suspended for eight days by the local issuing authority, effective October 2, 1950, for sales to minors; and, effective January 31, 1955, it was suspended for 180 days by me for violations substantially similar to those charged herein. Re Manzo, Bulletin 1050, Item 1.

In mitigation of the penalty to be imposed herein defendant represents that she was absent from her licensed premises for a long period of time due to her attendance on an indisposed relative and she has submitted a number of letters from professional and lay persons extolling her character, integrity and reputation.

A licensee who, as here, absents herself from the licensed premises cannot escape the consequences of the above related incidents on her licensed premises. She, as the wife of Albert Manzo, undoubtedly was familiar with the facts and my conclusions in Re Manzo, supra, yet she failed to heed my admonition to her husband that "\*\*\*defendant will be well advised to see to it that no further violations occur upon his licensed premises whether he is present or not" and that I intend to impose heavier penalties for future violations of the type charged therein.

Since defendant's predecessor in interest has a record of suspension and continued as an employee of the licensee herein, such record will be considered in arriving at the proper penalty to be imposed in the instant case. Re Pioneer Tavern, Inc., Bulletin 988, Item 11; Re Cherlin, Bulletin 992, Item 4; Re Hrycenko, Bulletin 994, Item 9; Re New Town Tavern, Inc., Bulletin 1055, Item 2.

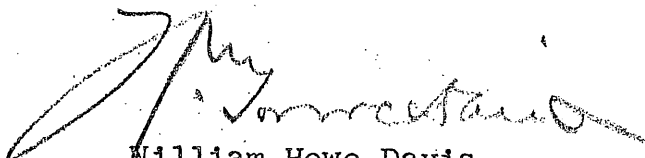
It has long been established that the unholy union of vice and liquor cannot and will not be tolerated on licensed premises. The public is entitled to be protected from the sordid activities which were permitted without compunction by both the licensee and her predecessor. However, since the evidence is insufficient to show that the licensee's employees participated in the alleged overtures by a female patron to engage in illicit sexual relations with a male patron and considering the mitigating circumstances

appearing herein, I shall suspend defendant's license for a period of two hundred and forty days.

Accordingly, it is, on this 14th day of June 1957,

ORDERED that Plenary Retail Consumption License C-124, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Marion Manzo, t/a The Casino, 6 Bank Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m., June 24, 1957; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1957-58 licensing year, such license shall be under suspension until 3 a.m., February 19, 1958.



William Howe Davis  
Director.

New Jersey State Library

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1202

JANUARY 8, 1958.

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4. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATE OF SUSPENSION  
TEMPORARILY POSTPONED.

In the Matter of Disciplinary )  
Proceedings against )

PERSO CO. )  
T/a JOHNNY'S CAFE )  
901-903 Springwood Avenue )  
Asbury Park, N. J., )

O R D E R

Holder of Plenary Retail Consump- )  
tion License C-58, issued by the )  
City Council of the City of Asbury )  
Park. )

-----  
Joseph N. Dempsey, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

An Order having been entered herein on December 2, 1957,  
suspending defendant's license for one hundred eighty (180)  
days commencing at 2:00 a.m. December 9, 1957 and terminating  
at 2:00 a.m. June 7, 1958; and

Application having been made to me by said defendant  
to postpone the effective date of said suspension to December  
16, 1957; and good cause appearing for the granting of said  
application,

It is, on this 9th day of December, 1957,

ORDERED that the one hundred and eighty (180) day sus-  
pension heretofore imposed in this proceeding, instead of  
commencing at 2:00 a.m. December 9, 1957, shall, in lieu  
thereof, commence at 2:00 a.m. December 16, 1957 and terminate  
at 2:00 a.m. June 14, 1958.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS NUISANCE -  
FEMALE IMPERSONATORS - PRIOR RECORD - LICENSE SUSPENDED FOR  
120 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

THE PADDOCK BAR, INC. )  
T/a PADDOCK BAR )  
1013 Main Street )  
Asbury Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-31, issued by the )  
City Council of the City of )  
Asbury Park. )

-----  
Joseph N. Dempsey, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 30 and July 6, 1957, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

The file herein discloses that at 1:25 a.m. Sunday, June 30, 1957, three ABC agents visited defendant's licensed premises wherein they remained until 3:30 a.m. During their stay they observed about eighty male patrons at the bar, whose effeminate mannerisms, high-pitched voices and display of affection towards one another characterized them as homosexuals. Miss Marion Brown (president and treasurer of corporate licensee) and the bartenders (Henry Eland and John Iannicelli) who were present during the agents' stay made no attempt to restrict the obviously vulgar exhibitionism. At 12:01 a.m. Saturday, July 6, 1957, the same three agents and another visited the licensed premises where they observed some seventy patrons being served alcoholic beverages by the aforesaid bartenders. The agents report that about 90 per cent. of the male patrons conducted themselves in like manner to the conduct observed by the agents on their previous visit. Miss Brown entered the premises about 12:50 a.m. and seated herself at the bar. One of the agents, in the presence of the other three, engaged Miss Brown in conversation respecting the effeminate traits of her patrons and asked her if there were any "straights" present. Her reply was, "I don't want any" and, when asked as to the whereabouts of "Tee" (a very effeminate male whom the agents had previously met), she stated, "Fred (another queer) should know. They have been going together pretty steadily."

It would serve no useful purpose to detail the indecent acts of the male patrons. Suffice to say that Miss Brown was aware of the profligacy of her patronage, as is evidenced by her statement to the agents after they disclosed their identities, that, "We are very strict that they don't bother anybody or touch anybody."

The defendant has a prior adjudicated record. Effective September 16, 1947, the license was suspended for two days by the local issuing authority for possessing mislabeled beer taps, and effective March 4, 1957, I suspended its license for sixty days for a violation similar to that charged herein. Re The Paddock Bar, Inc., Bulletin 1159, Item 2; affirmed sub. nom. Paddock Bar, Inc. v. Division of ABC, 46 N. J. Super. 405 (App. Div. 1957). The dissimilar violation, having occurred more than five years ago, will not be considered in fixing the penalty herein. However, considering the aggravated circumstances of the case and the prior similar violation which occurred within the year (Re Paddock Bar, Inc., *supra*), I shall suspend defendant's license for a period of one hundred twenty days. In fixing the penalty herein I have considered the alleged mitigating circumstances set forth in a letter sent to me by defendant's attorney. Five days will be remitted for the plea entered herein, leaving a net suspension of one hundred fifteen days.

Accordingly, it is, on this 21st day of November, 1957,

ORDERED that Plenary Retail Consumption License C-31, issued by the City Council of the City of Asbury Park to The Paddock Bar, Inc., t/a Paddock Bar, for premises 1013 Main Street, Asbury Park, be and the same is hereby suspended for one hundred fifteen (115) days, commencing at 2:00 a.m. December 2, 1957 and terminating at 2:00 a.m. March 27, 1958.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -  
LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

BRIGHTON BAR & GRILL, INC. )  
T/a BRIGHTON BAR & GRILL, INC. )  
119-121 Brighton Avenue )  
Long Branch, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-45, issued by the )  
Board of Commissioners of the City )  
of Long Branch. )

-----  
A. Henry Giordano, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that on the night of May 31, 1957 and the early morning of June 1, 1957 and on divers days prior thereto, it sold, served and delivered alcoholic beverages, directly or indirectly, to Roger ---, age 19, John ---, age 17, Beverly ---, age 17, Lawrence ---, age 17, Robert ---, age 18, George ---, age 20, and Elana ---, age 15, and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein it was established that Elana presently resides in California. The charge with respect to her was dismissed. The six other minors testified that they visited defendant's licensed premises about 9:30 p.m. Friday, May 31, 1957 and remained there with the exception of a brief interlude until approximately 1:30 a.m. the following morning; that during their stay they were served, as some of them had been on several previous occasions, alcoholic beverages by Anthony Pingitore, known as 'Inkie', who at no time required written proof of their ages. Roger testified that on the date alleged, he and John each purchased two six-pack cartons of beer for off-premises consumption and that later he consumed on the licensed premises five bottles of beer. John corroborated the testimony of Roger respecting the purchase of the beer for off-premises consumption and testified that he consumed on the premises both whiskey and beer. Beverly testified that she consumed a 'screw driver' (vodka and orange juice) which was ordered and paid for by one of her companions and placed on the

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

September 23, 1958

BULLETIN 1242

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7. DISCIPLINARY PROCEEDINGS (Passaic) - CHARGE ALLEGING FALSE ANSWER IN APPLICATION FOR LICENSE, DISMISSED.
8. DISCIPLINARY PROCEEDINGS (Lakewood) - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

New Jersey State Library

the old location, the 'other side of the railroad tracks'. In addition, the claim that the licensee caters to an objectionable type of patrons seems to rest on firm ground. The issuing authority, in the exercise of its discretion, did not refuse on that score to renew appellant's license at its old location for the 1958-59 period, and therefore he has been afforded the opportunity to seek another location if he cannot solve his difficulties with his present landlord. The local issuing authority apparently considers the matter as one of the exceptions to the principle above referred to. Cf. Weiss v. Newark, Bulletin 1079, Item 7.

"The Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and if so, to affirm irrespective of his personal views. Re Weiss v. Newark, supra.

"The burden of establishing that respondent's action was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision of respondent Board to deny the transfer is based upon evidence which appears to establish reasonable cause for its action. I am of the opinion that the appellant has failed to sustain the burden of establishing that the respondent Board's action was erroneous and hence, recommend affirmance of its action and dismissal of the appeal."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of August, 1958,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (LESBIANS ON PREMISES AND OBSCENE LANGUAGE) - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

ANNA THORN  
t/a PELICAN BAR  
488 Broad Street  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-899, issued by the  
Municipal Board of Alcoholic Bever-  
age Control of the City of Newark.

-----  
Anna Thorn, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On June 1, 13, 14, 19, 25 and 26, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered Lesbians and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On June 25 and 26, 1958, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The file discloses that various ABC agents at the defendant's licensed premises on June 1, 13-14, 19 and 25-26, 1958 observed on each occasion groups of females, varying in number from six to fifteen, who, by their attire, speech, actions and general demeanor appeared to be Lesbians.

On the last three occasions these Lesbians engaged in questionable conduct, attributable to their nature, such as dancing together and exchanging tokens of affection, although not of a degree sufficient legally to establish guilt, in disciplinary proceedings, for permitting lewd and obscene conduct on licensed premises.

These groups were definitely segregated from other patrons by Edward ---, one of the bartenders, who acknowledged that he knowingly permitted these Lesbians to "hang out" on the licensed premises. On June 13th Sam Thorn, son of the licensee, and the manager of the licensed business, in a conversation with the agents, acknowledged that there were Lesbians on the premises and stated that other Lesbians came to the premises including showgirls from New York. After the agents disclosed their identity on June 25th Thorn stated that he assumed there were Lesbians there. Asked why he did not eject them he replied, "What can I do, they come in here, order a drink and we serve them."

On June 25th Edward indulged in vulgar and indecent language and actions consisting of the repeated use of the vernacular word for sexual intercourse and one or two obscene gestures.

Proper liquor control dictates that licensed premises are not to become a haven for Lesbians or homosexuals. The manager of the licensed premises is mistaken in his notion that he may use the licensed premises to suit the convenience of sexual deviates. Where they congregate they constitute a threat to the safety and morals of the public. As was stated by Judge Jayne in Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n, 46 N. J. Super. 405, at page 408:

"Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud."

Defendant has a previous adjudicated record in that her license was suspended by the local issuing authority, effective May 22, 1950, for a sale to minors. Inasmuch as the dissimilar violation occurred more than five years ago it will not be considered in fixing the penalty herein. Re Burday and Budowsky, Bulletin 1227, Item 9. I shall suspend defendant's license for a period of sixty days on Charge 1 (Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1), and for an additional ten days on Charge 2 (Re Caridi's Bar, Inc., Bulletin 1185, Item 3), making a total suspension of seventy days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 11th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-899, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anna Thorn, t/a Pelican Bar, for premises 488 Broad Street, Newark, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. August 18, 1958, and terminating at 2:00 a.m. October 22, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - VIOLATION OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

HENRY D. GALLO and ANGELO J. )  
MACRAE )  
t/a TIOGA TAVERN )  
589 Communipaw Avenue )  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump- )  
tion License C-126, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Jersey City. )  
----- )

Defendant-licensees, Pro se.

David S. Piltzer, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to charges alleging that (1) on Sunday, June 29, 1958, they sold an alcoholic beverage in its original container for off-premises consumption in violation of Rule 1 of State Regulation No. 38; and (2) on said date they conducted their licensed business during prohibited hours in violation of a local ordinance.

The file herein discloses that on the above day and date, at about 12:20 p.m., an ABC agent knocked at the rear door of defendants' licensed premises, which door was opened by Henry D. Gallo (one of the licensees). The agent asked Gallo for a pint of port wine and Gallo told the agent to remain outside and he would bring the wine out to him if he

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1247

NOVEMBER 12, 1958.

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6. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library



3. DISCIPLINARY PROCEEDINGS - NUISANCE - FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary  
Proceedings against

ISABEL SHELL  
t/a SHELL'S BAR & RESTAURANT  
24 East Front Street  
Trenton 9, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-267 for the 1957-58  
licensing year, issued by the  
Board of Commissioners of the City  
of Trenton and extended for the  
1958-59 licensing year.

-----  
William Reich, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

'1. On May 10, 17, 18, 23 and 24, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

'2. On May 24, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"At the hearing herein the Division called as its principal witness one of three ABC agents who, on the dates alleged in the charge, participated in the investigation of defendant's licensed premises. It was stipulated that if the other agents were produced their testimony would corroborate that of the agent who testified.

"Succinctly stated, the Division sought to establish that on each of three visits to defendant's tavern the agents observed therein two females and about eighteen male patrons whose mannerisms, conduct and language categorized them as homosexuals.

"Specifically, the evidence shows that on the agents' first visit an effeminate male patron engaged them in conversation respecting the identity of a singer whose recorded voice was emanating from a juke box. There being a difference of opinion, the patron said: 'Oh, there is no point in arguing.

I will go ask Geraldine. She should know', and turning to a male nearby he asked: 'Geraldine, could you tell these boys who is singing the song in the juke box?' 'Geraldine' scrutinized the agents cap-a-pie, flickered his eyelids and replied coyly: 'Why that is Julie Andrews, of course, silly.' The agents noted that 'Geraldine' had 'very wavy long hair fluffed on the forehead, combed very thick in the back, tweezed eyebrows, he spoke in high-pitched tones, lispy voice, he swished and swayed as he walked about, held his cigarette very daintily, limp wrists, (held) his glass with his pinky out' and 'he appeared to be a fag'. The agents further noted that the majority of the males present were of the same type as 'Geraldine' and that a female seated at the bar was man-nishly attired, wore no make-up and had a masculine hair cut.

"On their second visit the agents overheard 'Geraldine' say to another effeminate male: 'Oh, I have had him', to which the other stated: 'I almost had him but I missed out and am broken-hearted over the fact.' 'Geraldine' then asked for and received paper and pencil from the bartender, wrote down the telephone number of the person whom they were discussing, and handed the paper to his companion saying: 'Oh, now you will have to doll up for him. He will want you to do that', and the other said: 'Oh, that is fine. I love to doll up.' 'Geraldine' then turned his attentions to the agents and tried persistently to have one of them leave the premises with him saying: 'I'll show you sex like you have never seen.' When the agent refused the invitation, 'Geraldine' walked away and was heard to sing a suggestive parody to a popular number being played on the juke box. A female called Elsa, who had kissed every male in the establishment including the agents, one of whom she endeavored to 'soul' kiss, joined in the double-entendre parody and concluded with salacious comments informative of her perverted tendencies. 'Geraldine' then exhibited to the other patrons and the agents a small replica of the male genitals, which he then placed on his coat lapel proclaiming: 'This is my badge.' The agents observed that the majority of the male patrons on this occasion appeared to be homosexuals.

"On their third visit the agents observed two effeminate males affectionately brushing each other's cheeks and then leave the premises together. Shortly thereafter 'Geraldine' and Elsa arrived. 'Geraldine' greeted the agents and put his arms around the waist of the agent whom he had previously solicited, rubbed his thighs, brushed his forehead and whispered: 'It was love at first sight between you and me.' Receiving no encouragement 'Geraldine' moved to another male seated at the bar. About this time one of the agents invited the licensee to have a drink which she accepted and in reply to the agent's comment that 'There aren't too many gay spots around, are there? It is nice when the kids can get together and come into their own place like this where the straights don't come in and gape at them', she said: 'Yes, it is nice.' After noting that the majority of the patrons present appeared to be homosexuals, the agents identified themselves to the licensee and 'informed her of the fact that these homosexuals were congregating on the premises.' The licensee stated: 'I knew that they came in here, but I can't distinguish them from anyone else.' Just then the agents observed 'Geraldine' embracing and kissing the male whom he had joined at the bar and called the scene to the attention of the licensee who said: 'Oh, I see what you mean. You can't have any of that kind of stuff going on here. I won't allow it any more.' The agents then asked to be shown a copy of her current license application and were informed that her accountant had taken it with him earlier that day.

"The witnesses who testified on behalf of the defendant were a police captain, a sales manager, three patrolmen, a housewife, an accountant, the licensee's bartender and the licensee herself. It appears that none of the witnesses, other than the licensee, her bartender and the police captain, was present on the licensed premises on the dates alleged and that the captain arrived on the early morning of May 24th after the agents had completed their investigation and departed.

"The captain testified, in substance, that he has been night captain of the police department since March 1, 1958, during which time he made regular inspections of taverns throughout the city including defendant's which he visited two or three times a week; that on numerous occasions he observed Jerry, the male referred to as 'Geraldine', seated at the bar in defendant's licensed premises and 'not bothering anyone'; that defendant's other patrons were persons whom he had known for many years and were 'strictly male and female' although 'Jerry is on the effeminate side'; that when he entered defendant's premises on May 24th, the patrons 'were the usual group that came in there and Jerry was with another man'; that 'when I walked in Jerry and the other man walked out and went down Union Alley, that is adjacent to Warren Street in the rear of the Casa Lido Bar'; that he has known the licensee for many years; that she conducts a decent tavern and that 'there have been no complaints whatsoever against her since she has taken over the establishment'.

"The sales manager testified that he has been visiting defendant's tavern two or three times a week for a period of three years and that from his observation the only patron who appeared to be effeminate was Jerry.

"Two patrolmen testified that during their tour of duty when assigned to the post on which defendant's tavern is located, they visited the tavern nightly and that the only eccentric person whom they observed was Jerry who, in their opinion, was 'on the effeminate side'. The other patrolman testified that on his visits to defendant's tavern during his tour of duty he observed Jerry and three or four other males who were on the effeminate side.

"The housewife testified that about four months prior to the charge preferred herein, she had visited defendant's tavern once a week 'for years' and didn't notice any unusual conduct on the part of the patrons. 'They were all friendly'.

"The accountant testified that he takes care of records and financial matters for defendant and some twenty other licensees and that, as is his custom, he took home the copy of defendant's license application in order to prepare her renewal application.

"The bartender testified that he has been employed on defendant's licensed premises since March 15, 1958; that his tour of duty is from 6:00 p.m. to 2:00 a.m.; that he was on duty on the dates alleged and that from his observations the conduct of the patrons would be 'respectable not only in that bar but any bar which is proper'. He further testified that he has known Jerry from childhood and that 'he always had those characteristics' and that none of the other patrons answered the descriptions testified to by the agents.

"The licensee testified that she was in the licensed premises on the dates alleged; that she never noticed anything

abnormal about her patrons; that 'Jerry acted a little like a sissy' but was a gentleman and that Elsa 'was always a very nice person'. She testified further that when the agents made their identities known they told her she was serving 'queers' and that she said: 'If this is what I am doing I certainly would like to find out and get rid of it. But what was I supposed to look for?' She also testified that one of the agents had told her that 'Jerry had kissed a man, but by the time I turned around I didn't see anything'.

"Having carefully considered the facts and circumstances herein with respect to Charge 1, I find that the Division has established by more than a fair preponderance of the evidence that defendant's patrons not only appeared to be sex deviates but that one of them actually solicited an agent for purposes of sex perversion. While it may be true that the licensee had no knowledge of her patrons' lewd proclivities, notwithstanding her association with the tavern business for more than twenty years, nevertheless, it was incumbent upon her as it is with all liquor licensees, to conduct the licensed business in a manner which will not be inimical to the public welfare.

"As was pointed out in Re Schneider, 12 N. J. Super. 449 (App. Div. 1951):

'The object manifestly inherent in the rule with which we are here concerned (likewise Rule 5) is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil.'

"It is deemed pertinent to restate herein the language of Judge Jayne in Paddock Bar, Inc. v. Division of ABC, 46 N.J. Super. 405 (App. Div. 1957), wherein he said:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"I conclude from all the evidence that defendant conducted her business in a manner offensive to common decency and public morals and that she did not have, as required by regulation, a copy of her current license application on her licensed premises. I recommend, therefore, that she be adjudged guilty on both charges. I further recommend that her license be suspended for sixty days on Charge 1, Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2, and for an additional five days on Charge 2, Re Laffman, Bulletin 1237, Item 6, making a total suspension of sixty-five days."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations. However, since it appears that the part of the report which deals with licensees' responsibilities should be more fully treated, I am reiterating the principles enunciated in Re T-Bar & Grill, Inc., Bulletin 1237, Item 1, wherein it is stated that:

"\*\*\* even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises.' Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N. J. L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140.'

Accordingly, it is, on this 18th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-267, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton to Isabel Shell, t/a Shell's Bar & Restaurant, for premises 24 East Front Street, Trenton, which license has been extended by my order dated June 27, 1958, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. September 27, 1958, and terminating at 2:00 a.m. December 1, 1958.

WILLIAM HOWE DAVIS  
Director.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

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11. STATE LICENSES - NEW APPLICATION FILED.

4. DISCIPLINARY PROCEEDINGS - NUISANCE (FEMALE IMPERSONATORS AND OBSCENE LANGUAGE) - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary  
Proceedings against

801 HAMPSHIRE CORP.  
t/a TOPSY'S HIDEAWAY  
801 N. New Hampshire Avenue  
Atlantic City, New Jersey

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-164, issued by the Board  
of Commissioners of the City of  
Atlantic City.

-----  
Edward I. Feinberg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On August 22, 23, 30 and 31, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you employed on your licensed premises and allowed, permitted and suffered thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On August 23, 30 and 31, 1958, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises in that you allowed, permitted and suffered persons employed on your licensed premises as entertainers to perform in a lewd, indecent and immoral manner, sign songs, utter words and phrases and make gestures and movements having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.

"3. On August 30 and 31, 1958, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

Late in the evening of August 22 and the early morning hours of August 23, 1958, ABC agents at defendant's licensed premises observed that many of its employees appeared by their attire, demeanor and actions to be homosexuals. Seven of such persons were females, four employed as bartenders, one as the headwaitress and two as waitresses. Three of such persons were males who acted as waiters. Another such male acted as master of ceremonies and sang. Three persons of this character, two females and one male, were there as patrons. A female entertainer told double entendre stories and

engaged in indecent language and a song of sexual import, and performed a "bumps and grind" and otherwise objectionable dance.

In the late evening hours of August 30 and early morning hours of August 31, 1958, ABC agents were again in defendant's licensed premises. On this occasion there were three female bartenders, one female head waitress, one female waitress and four male waiters, some of whom had been so employed on the last visit of the agents and all of whom were apparently homosexuals. One of these waiters, when conversing with the agents, used indecent language. Three males of this character entertained by singing. The female singer seen there on the previous visit of the agents told stories, sang and danced in a performance similar to that observed on the first visit.

Rose D'Amato, president of the corporate licensee, wearing a man's sport shirt and close-cropped hair, was also on duty behind the bar. The agents identified themselves to Rose D'Amato and called her attention to what they observed, whereupon she said, "They are queer, but they don't bother anyone or carry on. I won't allow it."

In sum, the licensee's agents did not merely tolerate the presence of sexual deviates or merely permit its licensed premises to become a haven for such persons, but actually publicized, by employing apparent homosexuals almost exclusively, that it was a place where patrons could witness sexual depravity and, as a concomitant thereof, unseemly and degrading entertainment.

As I said in Re Polka Club, Inc., Bulletin 1045, Item 6:

"Rigid enforcement of the regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals which demand a severe penalty in this case ...

"...degradation and depravity, which constitute so serious a threat to the public welfare and morals, will not be tolerated upon licensed premises..."

Since defendant has no previous adjudicated record, I shall not revoke its license, but instead, shall suspend it for the balance of its term. Re Polka Club, Inc., supra. It is apparent that if defendant desires a renewal of its license it will have to change drastically its manner of operating the premises.

Accordingly, it is, on this 29th day of December 1958,

ORDERED that Plenary Retail Consumption License C-164, issued by the Board of Commissioners of the City of Atlantic City to 801 Hampshire Corpl, t/a Topsy's Hideaway, for premises 801 N. New Hampshire Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, effective at 7:00 A.M., Monday, January 5, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

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11. STATE LICENSES - NEW APPLICATION FILED.

5. DISCIPLINARY PROCEEDINGS - NUISANCE (FEMALE IMPERSONATORS AND OBSCENE LANGUAGE) - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary )  
Proceedings against )  
JOCKEY CLUB, INC. )  
t/a JOCKEY CLUB )  
5-7-7 1/2-9 S. North Carolina Ave. )  
Atlantic City, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-212, issued by the Board )  
of Commissioners of the City of )  
Atlantic City. )

-----  
Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On August 16, 17, 23, 30 and 31, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you employed on your licensed premises and allowed, permitted and suffered thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On August 16, 17, 30 and 31, 1958, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises in that you allowed, permitted and suffered persons employed on your licensed premises as entertainers to perform in a lewd, indecent and immoral manner, sing songs, utter words and phrases and make gestures and movements having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.

"3. On August 23, 1958, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On Saturday night, August 16, 1958 at about 10:15 p.m., ABC agents at defendant's licensed premises observed four female bartenders who, by their attire, demeanor and actions, appeared to be homosexuals. At about 11:45 p.m. the agents entered the rear room to observe entertainment which was about to commence. In this room there were four male waiters, a male head waiter and four female waitresses who appeared to be homosexuals. A three-piece band was on the stage. First to perform was a chorus of six persons all of whom were apparent homosexuals and had been previously observed acting as waiters and waitresses. When they completed their performance they returned to their other duties. A male homosexual then appeared on the stage and

announced that he was the master of ceremonies. He introduced a female vocalist who sang double entendre songs and told off-color stories. Other entertainment was presented which was unobjectionable.

ABC agents were again at the premises on Saturday, August 23, 1958 at about 1:30 a.m. Three female apparent homosexuals were acting as bartenders. A number of the apparent homosexuals who acted as waiters and entertainers were observed in the barroom during the course of the evening. A female and two male apparent homosexuals were in the premises as patrons. One of these lesbian bartenders, in a conversation with the agents, used indecent language and declared that she "picked up" many females while employed there as a bartender.

The last visit of the agents was on Saturday, August 30, 1958 when they entered at about 10:00 p.m. Four female apparent homosexuals were tending bar. Two female and three male patrons appeared to be homosexuals. The lesbian bartender with whom the agents had a conversation on August 23d again spoke with them and used some indecent language in the course of her conversation. One of the homosexual entertainers previously observed there came to the bar. At about 10:50 p.m. the agents entered the room where entertainment was being presented. A male comedian was relating lewd and double entendre stories. The master of ceremonies previously referred to appeared on the stage and introduced a homosexual trumpet player. The chorus of six, comprised of homosexual waiters and waitresses, then entertained. Five other homosexual waiters and waitresses were on duty.

The instant case is almost identical with a contemporaneous case. See Re 801 Hampshire Corp., Bulletin 1259, Item 4. Here, as there, the licensee did not merely tolerate the presence of sexual deviates or merely permit its licensed premises to become a haven for such persons, but actually publicized, by employing apparent homosexuals almost exclusively, that it was a place where patrons could witness sexual depravity and, as a concomitant thereof, unseemly and degrading entertainment.

To repeat the reasons why such misconduct is considered of a most aggravated nature.

"Rigid enforcement of the regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals which demand a severe penalty in this case...

"...degradation and depravity, which constitute so serious a threat to the public welfare and morals, will not be tolerated upon licensed premises..."

Re Polka Club, Inc., Bulletin 1045, Item 6.

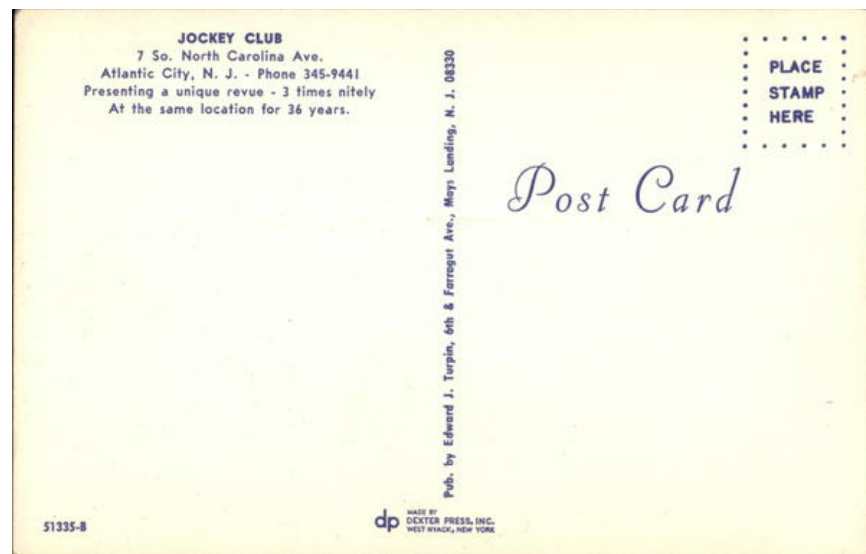
Since defendant has no previous adjudicated record, I shall not revoke its license, but instead, shall suspend it for the balance of its term. Re Polka Club, Inc., supra. It is apparent that if defendant desires a renewal of its license it will have to change drastically its manner of operating the premises.

Accordingly, it is, on this 29th day of December 1958,

ORDERED that Plenary Retail Consumption License C-212, issued by the Board of Commissioners of the City of Atlantic City to Jockey Club, Inc., t/a Jockey Club, for premises 5-7-7 1/2-9 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, effective at 7:00 a.m., Monday, January 5, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

The postcard is for the Jockey Club at 7 So. North Carolina Avenue, near Atlantic Ave.



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1263

FEBRUARY 9, 1959

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New Jersey State Library

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1263

FEBRUARY 9, 1959

1. APPELLATE DECISIONS - STORKY'S, INC. V. TRENTON

STORKYS, INC., t/a STORKYS, )

Appellant, )

v. )

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE )  
CITY OF TRENTON, )

Respondent.

-----  
David A. Friedman, Esq., Attorney for Appellant.

Louis Josephson, Esq., by John A. Brieger, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on June 19, 1958 it denied, by resolution, appellant's application for renewal of its 1957-58 license for the following stated reasons:

'1. That on May 9, 10, 23 and 24, 1958, the licensee allowed, permitted and suffered its licensed place of business to be conducted in such manner as to become a nuisance in that it allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon its licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon its licensed premises; and allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon its licensed premises; and otherwise conducted its place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20.

'2. That on May 17, 23 and 24, 1958, it allowed, permitted and suffered gambling in and upon its licensed premises, viz., the playing on a device or apparatus designated as a "bowling" machine for stakes of money, in violation of Rule 7 of State Regulation No. 20.

'3. That on May 9 and 10, 1958, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon its licensed

premises, in violation of Rule 1 of State Regulation No. 20.

'4. That on May 24, 1958, and on divers days prior thereto, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

'5. That the licensee is unfit to operate said licensed premises for the reason that said licensed premises were conducted improperly and in violation of the law and the rules and regulations relating to the conduct of the licensed premises, and it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for the renewal of said license.

'6. That it is to the best interests of the surrounding community and the city in general that said application be denied.'

"Upon the filing of the appeal an order was entered by the Director on June 27, 1958 extending the term of appellant's license until further order herein.

"Appellant, in its petition of appeal, alleged, in substance, that the respondent's action was based solely on the disciplinary charges then pending, instituted by the Director, without any knowledge of the nature of the evidence upon which such charges were based and, hence, prejudged the charges; that appellant was not offered an opportunity to hear such evidence and present its defense thereto before the local issuing authority and, hence, such action was an abuse of its discretion.

"Respondent contends that its action was predicated upon a consideration of all the facts and surrounding circumstances relating to the conduct in and operation of appellant's licensed business and was a reasonable exercise of its discretionary authority.

"The violations alleged in the disciplinary charges above referred to are identical with those set forth in paragraphs 1 to 4 inclusive of the reasons asserted by respondent in denying appellant's application for renewal. On September 5, 1958 the disciplinary case was heard at the office of this Division and, thereafter, on the same day, the appeal was heard. In lieu of presenting testimony on the appeal, it was stipulated that the evidence adduced at the disciplinary hearing, together with the written stipulation filed by counsel for the respective parties and an affidavit received subsequent to the hearing, should be considered as the evidence adduced at the hearing on appeal and that the Director's determination with respect to the disciplinary charges, together with his consideration of the stipulation and affidavit, should be the basis of his conclusions and order herein.

"Contemporaneous with this report, the hearer has recommended in his report that the defendant be adjudged guilty of all



charges preferred against it in the disciplinary proceedings on the basis of the evidence presented and has recommended that its license be suspended for a period of one hundred ten days.

"Since I have considered that the violations set forth in the disciplinary proceedings have been established, there remains for consideration the issue whether the respondent was premature in considering such violations as the reason for its action and whether or not such action was an abuse of respondent's discretionary authority.

"The substance of the stipulation hereinabove referred to is that the corporate license, while under the ownership of the Storcella family, has no previous adjudicated record or been the subject of any formal complaint, and that the issuing authority has previously exhibited no policy evidenced by resolution that one violation of the type herein involved would result in a refusal to renew the license. The affidavit above referred to sets forth a statistical analysis of the action of the local issuing authority when considering renewal of licenses contemporaneous with appellant's, whereby it appears that such authority renewed a great number of licenses with records of violation or criminal convictions for violating the Alcoholic Beverage Law. It is well established that a local issuing authority may refuse to renew a license on the basis of a violation committed during the previous licensing year. The contention, stressed in appellant's brief that the local issuing authority prematurely considered the then unestablished charges and, hence, it was an improper basis for its failure to renew the license is not here a controlling factor. Such action did not deny to appellant the 'simple consideration of fairness' since it appears that the licensee has to date continued to operate the licensed business under the Director's order extending the license and the licensee has now, in fact, been adjudged guilty of all of the charges preferred against it.

"The further contention that the refusal to renew appellant's license was inequitable and unjust, resting in substance on alleged disparate treatment accorded to the licensees of Trenton, is a subject which has been previously advanced in other localities, considered and rejected. In Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172, at page 175, Judge Eastwood, speaking for the Appellate Division, stated 'Assuming, but not conceding, that other licenses were granted under somewhat similar circumstances, it does not follow that the governing body should further perpetuate earlier unwise action.' The Biscamp case was cited in Nordco, Inc. v. State, 43 N. J. Super. 277 at page 288 and Judge Clapp, speaking for the Appellate Division on the subject of alleged disparate treatment among licensees in Newark, added 'Indeed, it may be that the Newark board in the exercise of its discretion might properly have refused to renew other licenses. However, as an appellate court, we are concerned merely with the question whether the refusal to renew Nordco's license was the result of intentional discrimination or other arbitrary action.' In the instant case, like the Nordco case, the appellant has not established intentional discrimination or other arbitrary action.

"I therefore recommend that respondent's action in denying appellant's application for renewal of its license be affirmed and the appeal dismissed; and that the order extending the term of appellant's license be vacated effective immediately."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's



attorney and written answering argument was filed by respondent's attorney, pursuant to Rule 14 of State Regulation No. 15. The appellant's attorney's request for oral argument thereon was denied by me.

After carefully considering the entire record herein, including the transcript of the proceedings, the memoranda filed with the Hearer by the respective attorneys prior to the Hearer's recommendations in the matter, the Hearer's Report, the written exceptions thereto and the arguments advanced by the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that the action of respondent Board of Commissioners be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated June 27, 1958 extending the term of appellant's license be and the same is hereby vacated, effective at 2:00 a.m., Monday, January 19, 1959, at which time appellant must cease all activity under said license.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (FEMALE IMPERSONATORS) - GAMBLING - SALES TO INTOXICATED PERSONS - SALE TO MINOR - LICENSE SUSPENDED FOR 110 DAYS.

In the Matter of Disciplinary Proceedings against

STORKYS, INC.  
t/a STORKYS, INC.  
151 E. Front Street  
Trenton 9, New Jersey

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-195, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton, and extended for the 1958-59 licensing year.

David A. Friedman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against defendant:

"1. On May 9, 10, 23 and 24, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and allowed, permitted and

suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

'2. On May 17, 23 and 24, 1958, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing on a device or apparatus designated as a "bowling" machine for stakes of money; in violation of Rule 7 of State Regulation No. 20.

'3. On May 9, and 10, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'4. On May 24, 1958 and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Kenneth ---, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"Defendant has pleaded non vult to Charge 4 and not guilty to the other charges.

"At the hearing herein it was established that on May 9, 1958, at about 11:15 p.m., three ABC agents entered the defendant's licensed premises. Anthony Storcella was tending bar. According to the agents, a male referred to as 'Dino' or 'Dina' was present. He was dressed in tight slacks, with long hair in back, fluffed on his forehead, and tweezed eyebrows. He spoke with a high pitched voice, walked with exaggerated 'swishing' and 'swaying' of his hips, fluttered his eyelids when conversing with two males and displayed other effeminate mannerisms. At one time Dino displayed to those present including the agents a photograph which appeared to be a female with long dark hair wearing a strapless evening gown. Dino identified this picture as a photograph of himself. The agents concluded from what they observed that Dino was an apparent homosexual.

"The agents observed Dino dance on a number of occasions to the music of a juke box. Some of these dances are described as of a 'bumps and grinds' nature. On one of these occasions a female seated nearby began shaking her breasts. At her invitation Dino danced over to her and for a moment shook her breasts with his hand. Then Dino and the female danced together a 'fish' dance which is described as one simulating sexual intercourse. The bartender observed the dance and addressed the couple with the words 'go, go, go'.

"During their observation of Dino's conduct they observed a male with his arm around Dino whispering in his ear. This man's elbow kept slipping off the bar, his eyes appeared to be glassy,

his speech was slurred and incoherent and he staggered when he walked. The agents observed the service of alcoholic beverages by the bartender to this man while he was in such condition. This man left the bar, placed his arms around the neck and waist of the agents, placed his hand indecently on two of the agents, and later suggested to the three agents that they go home with him for a good time of an unspecified nature. He claimed to be employed as a therapist in a hospital and displayed an identification card with his name and photograph. The agents concluded that he was intoxicated. They observed three other persons there who had the appearance of intoxication and who were served with alcoholic beverages. The agents' description of what they observed is the basis for the violations charged as occurring on May 9 and 10, 1958.

"These ABC agents were again in the premises on May 17, 1958. Anthony Storcella was tending bar. They did not see Dino there and, in response to their inquiry as to his whereabouts, the bartender told them that he was there the previous evening and might come there later; that he usually stops in every night. They observed two persons playing a shuffleboard game for money stakes in which Anthony participated by betting with the respective players on the outcome of the game. This is the basis for the violation charged as occurring on May 17, 1958.

"The last of these visits by ABC agents to the premises was late in the evening of May 23 extending to the early morning hours of May 24, 1958. On this occasion Dino entered with another man and was joined by a third. These two men did not remain long in the premises and, from what they could observe, the agents suspected that they may have been homosexuals. One of the agents testified that during the course of the evening Dino made improper advances to him in the men's room. The agents and other persons played shuffleboard games with bets on the outcome thereof with Anthony Storcella, who was tending bar. During their visit the agents observed the sale of alcoholic beverages to Kenneth ---, a minor, 18 years of age. The agents ultimately disclosed their identity on this occasion to Anthony Storcella and to Richard Storcella, one of the corporate stockholders who arrived on the scene, and apprized them of the activities on the licensed premises which they had witnessed that night. The agents were then informed that the minor had previously displayed an identification card which represented him to be over 21 years of age.

"There does not appear to be any dispute that at least Dino was an apparent homosexual. Peter Storcella, another stockholder of the corporate licensee, testified 'Well, he (Dino) is a little more than out of the way'; 'a little delicate, effeminate'. Asked whether he did not consider Dino a homosexual he replied 'Well, maybe at times I did, but he never bothered anyone, he just kept his own place'.

"Robert Storcella testified that Dino 'appeared to be a little effeminate'. A patron who testified on the licensee's behalf said that 'He (Dino) had a little strange movement by the way he walked and all', although the witness claimed that he could not recognize a homosexual from a normal person unless such person made improper advances.

"Another patron testified that he thought 'He (Dino) might have been effeminate'. Obviously, Dino frequented the premises and, hence, the violation does not involve a single or occasional appearance of Dino at such premises.

"Anthony Storcella admitted that he placed bets with the

agents on May 23, 1958 on the outcome of a shuffleboard game but claimed that he did not place such bets on May 17, 1958 with the other two persons. The sale to the minor is admitted albeit attempted to be mitigated by the display by the minor of an identification card. The Storcellas profess to have no knowledge of the presence of the intoxicated person and his conduct on May 9, 1958.

"In effect then, there is no defense presented to the charge of permitting at least one homosexual to frequent the premises; or to the charge of permitting gambling; or to the charge of permitting the sale of alcoholic beverages to a minor, and the licensee's employees assume a negative position with respect to the sale to an intoxicated person and indecent conduct by him by professing lack of knowledge thereof. The only positive attitude is Anthony's assertion, as well as one of the other witnesses, that Dino did not perform an indecent dance on May 9, 1958.

"In my opinion, the preponderance of the believable evidence establishes the guilt of the defendant licensee of all the charges preferred against it and I recommend a finding to that effect. Since defendant has no prior adjudicated record, I recommend that its license be suspended for a period of sixty days on Charge 1 (Re Rutgers, Bulletin 1133, Item 2); thirty-five days on Charges 2 and 3 (Re Amster & Robins, Bulletin 1237, Item 2) and fifteen days on Charge 4 (Re Krygier, Bulletin 1234, Item 8), making a total suspension of one hundred ten days. I further recommend that no effective date be fixed for the commencement of the suspension because, in a contemporaneous report on the licensee's appeal for failure of the local issuing authority to renew its license, I recommended affirmance of such action and dismissal of the appeal and an order terminating extension of the license by the Director under which the licensee has been and is now operating, thus effectively terminating the conduct of the licensed business."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the defendant, pursuant to Rule 6 of State Regulation No. 16. Application by such attorney for oral argument thereon was denied.

Having carefully considered the entire record, including the transcript of the testimony, the memorandum filed with the Hearer by the attorney for defendant prior to the Hearer's recommendation in the matter, the Hearer's Report, and the exceptions and written argument submitted by such attorney, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that Plenary Retail Consumption License C-195, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton, and extended for the 1958-59 licensing year to Storkys, Inc., t/a Storkys, Inc., for premises 151 E. Front Street, Trenton, be and the same is hereby suspended for one hundred ten (110) days. No effective date will now be fixed for the commencement of the suspension since, by my contemporaneous order dismissing the defendant licensee's appeal from the denial of renewal of such license, I have vacated my order extending the term of such license, thus effectively terminating any operation of the licensed business after 2:00 a.m., Monday, January 19, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1267

MARCH 16, 1959.

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New Jersey State Library

premises listed in a business neighborhood. Cf. Palmer v. Atlantic City, Bulletin 1017, Item 1.

"While it is true that the issuing authority's discretionary powers are very broad and that, on appeal, the burden of proof is on the appellant, the presumption in favor of the validity of the issuing authority's action is not conclusive. Ways and Witteborn v. Egg Harbor et als., Bulletin 951, Item 3; Olko v. Saddle River Township et al., Bulletin 914, Item 3. The reasons assigned for its action must be reasonably supported by the evidence in order for such action to be sustained. O'Bertz v. Perth Amboy, Bulletin 1011, Item 1.

"Under all the facts and circumstances in this case, I find that the refusal to approve the application for transfer of the license in question was unreasonable and I recommend that the action of respondent be reversed."

No exceptions to the Hearer's Report were taken within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 3rd day of February, 1959,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is directed to approve such transfer application subject to the special condition that the transfer shall not be endorsed on the license certificate and become effective unless and until the proposed building is duly completed in keeping with the plans and specifications on file with the Borough Clerk and that appellant has complied with all other safety, health and sanitary regulations required by the Borough.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - PERMITTING ARRANGEMENTS FOR ILLICIT SEXUAL INTERCOURSE - NUISANCE - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM (142 DAYS).

In the Matter of Disciplinary  
Proceedings against

EDNA HAFNER  
t/a EDNA'S RENDEZVOUS  
45 West Broadway  
Paterson, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-250, issued by the  
Board of Alcoholic Beverage Control  
for the City of Paterson.

-----  
Murner & Murner, Esqs., by James J. Murner, Esq., Attorneys for  
Defendant-licensee.

Edward F. Ambrose, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On September 10, 11, 17, 25 and 26, 1958, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of overtures and arrangements for illicit sexual intercourse and acts of perverted sexual relations; in violation of Rule 5 of State Regulation No. 20.

"2. On September 10, 11, 17, 25 and 26, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered on your licensed premises persons, females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"3. On July 4, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Kathleen ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on four separate occasions during the month of September 1958. During the first visit on September 10th, the agents engaged in conversation with a woman (hereinafter referred to as Ella) who promised that if they would return to defendant's premises on either the following Friday or Saturday night she would procure two females who would engage in illicit sexual relations with them. The agents left the premises at 1:00 a.m. the following morning. On Friday, September 12th, the agents returned to the premises and inquired of the bartender concerning Ella and told him of her promise to have females in the licensed premises on that night who would engage in immoral activities with them. The bartender stated that he did not see her. On the evening of September 17th, as the agents were engaged in conversation with the bartender about Ella's failure to be present on September 12th, Ella entered the premises. When the agents questioned her about her failure to appear on September 12th she stated that one of the bartenders employed at defendant's premises advised her that the ABC agents were to be in town on that date. She promised the agents that if they would come to the defendant's establishment on Thursday (September 25th) she would introduce them to females who would engage in illicit sexual intercourse. The bartender joined in the conversation and stated he desired also to engage in illicit intercourse, to which one of the agents suggested that he obtain his own girl and keep away from those which Ella was to provide for them. The agents observed seven females in the premises who, from their attire, hair style and demeanor, appeared to be Lesbians.

The agents again visited the defendant's premises on September 25th and some time after their arrival Ella came into the premises. She immediately approached the agents stating that on the previous night she had two girls for them. As Ella and the agents were engaged in conversation, a girl called



Ruth came over and Ella asked the bartender to give her a drink. The bartender poured a glass of beer for Ruth taking payment therefor from the money on the bar belonging to one of the agents. The agents inquired of Ella whether Ruth was available for illicit sexual relations. Ella then engaged in whispered conversation with Ruth and the agents were advised that Ruth would go out with one of them to engage in a perverted sex act. The agent informed the bartender what he and Ruth intended to do and then he left the premises. Five minutes thereafter Ruth emerged from the premises and after she got into the agent's car he drove to the far end of the parking lot. As they sat in the car Ruth stated that she charged \$5.00 to perform the perverted act, at which time the agent handed her a five-dollar bill (the serial number of which had been previously recorded). Another agent and two local detectives approached the car and ordered both occupants to come out. Ruth was directed to empty her purse and the five-dollar bill given to her by the agent was found. The agents, officers and Ruth returned to the licensed premises and identified themselves. One of the bartenders refused to answer questions and the other stated he had nothing to do with the arrangements that were made by Ruth and the agents.

An examination of the file with reference to Charge 3 discloses that on July 4, 1958 Kathleen ---, age 20 years, was served six or seven glasses of beer in defendant's licensed premises. The minor stated that she was not questioned as to her age before service of the drinks to her.

Counsel for defendant in attempted mitigation of penalty has submitted an affidavit by defendant wherein she states in substance, that since acquiring the licensed premises on May 28, 1958, she has attempted to keep lesbians and other undesirable characters from frequenting the premises. Furthermore, she states that because of illness she was absent from the licensed premises during September 1958 when the violations concerning immoral activities occurred; that because of her age and physical condition she intends to dispose of her business.

Licensees are responsible for violations committed on licensed premises during their absence or committed by their agents, servants or employees, even though they did not personally participate in the violations, or if committed contrary to instructions. Rule 33 of State Regulation No. 20; Re Paton, Bulletin 898, Item 3. See also Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951).

Defendant has a prior adjudicated record. Effective October 15, 1956 her license was suspended for twenty-five days for sale of alcoholic beverages to minors. Re Hafner, Bulletin 1139, Item 10.

There is no indication that any female was procured by the bartender to engage in immoral activities with the agents. Furthermore, the defendant was not present in the establishment when the arrangements were made with a female in this case. In view of these facts and taking into consideration the previous record of defendant occurring within the past five years, I shall suspend her license for the balance of its term. Defendant's suggestion to dispose of the licensed business seems to be well taken. For her to continue the operation of the establishment without her presence there in a supervisory capacity, in all probability would lead to future violations.

Accordingly, it is, on this 2nd day of February, 1959,



ORDERED that Plenary Retail Consumption License C-250, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Edna Hafner, t/a Edna's Rendezvous, for premises 45 West Broadway, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. Monday, February 9, 1959.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS NUISANCE  
(UNESCORTED FEMALES SOLICITING DRINKS, OBSCENE LANGUAGE) -  
PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

279-10, INC.

t/a MIDTOWN TAVERN

279 Market Street & 10 Park Avenue

Paterson 4, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-17, issued by the Board of  
Alcoholic Beverage Control for the  
City of Paterson.

-----  
George S. Grabow, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On October 25, 31, November 15, 16, 20, 22 and 23, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons, directly or indirectly, to purchase numerous drinks of alcoholic beverages for consumption by them and others; allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents were in defendant's licensed premises on the dates set forth in the charge herein. On all of the aforesaid visits the agents observed four unescorted females solicit numerous drinks from and at the expense of a number of male patrons, with the complete cooperation and assistance of the bartender Joseph Cropanese (secretary of the corporate licensee). On three of aforesaid visits these females also successfully practiced their "barfly" activities on the ABC agents. On November 15 aforesaid an agent observed that one of these females was served seven drinks within five minutes at the expense of an apparently intoxicated patron. During two of said visits an agent heard the bartender and one of the aforesaid females use foul and obscene language without restraint.

By way of mitigation the defendant's attorney has submitted a statement which I have carefully read, together with the reports of the agents.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1289

August 7, 1959

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8. DISCIPLINARY PROCEEDINGS (Newark) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
9. STATE LICENSES - NEW APPLICATION FILED.

the balance of its term, effective at 3:00 a.m., Monday, June 22, 1959; and it is further

ORDERED that any renewal for the 1959-60 licensing year or transfer of said license shall be and remain under suspension until 3:00 a.m., Wednesday, August 26, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

Savoy Club, Inc.  
t/a Anthony's  
52 Church Street  
Paterson, New Jersey,

Holder of Plenary Retail Consumption)  
License C-282, issued by the Board  
of Alcoholic Beverage Control for  
the City of Paterson.  
----- )

CONCLUSIONS

AND

ORDER

Edward H. Saltzman, Esq., by Joseph D. J. Gourley, Esq., Attorney  
for Defendant-licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following  
charge:

'On December 19, 20, 27, 28, 1958 and January 3 and 4, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"From the evidence herein it appears that four ABC

agents (hereinafter identified as S, G, J and D) participated in the investigation and that visits to defendant's premises were made on the evening of December 19 extending into the early hours of December 20; on the evening of December 27 extending into the early hours of December 28, and on the evening of January 3 extending into the early hours of January 4.

"Agent S testified that on their first visit he and Agent G entered an outside door to the barroom which is located on the ground floor of the licensed premises; that nothing unusual occurred in the barroom, and that they then left the barroom and entered another outside door located at the head of a stairway leading to a banquet-type room located beneath the barroom. The agent further testified that the words 'Circus Room' appeared upon a window near this entrance and that, when they entered the banquet-type room, they observed five males seated at a small bar; twenty-two males in small groups seated at the various tables, and seven females who sat in groups at two other tables; that a large number of the males wore loud sweaters, loud shirts and multicolored scarves, and that many of them walked with hips swaying from side to side, held their glasses and cigarettes daintily and spoke in high-pitched voices. The males frequently referred to one another as 'gay,' 'doll' and 'honey.'

"The same agent testified that on the second visit he and Agent J went directly to the Circus Room and that each was required to pay at the entrance the sum of \$1.50 for three ticket stubs which they later used as payment for drinks of beer and hamburgers. The agent testified that on this occasion there were forty-five males and two females in the room, and that about forty of the males were dressed in the manner previously described; that many of the males swished their hips from side to side as they walked.

"The same agent testified that on the third visit he and Agent J went directly to the Circus Room where each was again required to pay \$1.50 for three ticket stubs; that at this time there were fifty males and two females in the room, and that about forty-seven of the males were dressed as previously described; that many of the males swished their hips from side to side as they walked, held their cigarettes daintily and spoke in high-pitched tones, referring to one another as 'gay,' 'doll' and 'honey.' He testified that on one occasion a male kissed another male on the neck. He further testified that, immediately after the agents identified themselves, practically all of these male patrons ran towards the exit and up the stairs. The testimony as to the actions of the male patrons on the third visit was substantially corroborated by the testimony of Agent D, and it was stipulated that, if Agents G and J were called to testify, their testimony would be substantially the same as that given by Agent S.

"On behalf of defendant, Ruth Murphy Loomis, president of defendant corporation, testified that groups of boys and girls, who worked nearby, had arranged for parties in the banquet room on the three evenings in question; that she was present on each evening and saw nothing unusual in the conduct of the patrons. She admitted, however, that, after the agents identified themselves on the morning of January 4, she said to one of them, 'Tell me one thing: These people who you call homosexuals, gays or whatever you call them - what are they supposed to do?' and that the agent replied, 'I can't answer that.' It

is significant that none of the persons who allegedly arranged for the parties appeared at the hearing herein. It is clear from the evidence that none of the male patrons wore feminine attire and that no dancing was permitted. Nevertheless, the evidence shows that a large percentage of the male patrons were obviously homosexuals as indicated by their appearance and actions, their walk, gestures and other mannerisms. As was said by the Director in Re Rutgers Cocktail Bar, Bulletin 1133, Item 2:

'The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than mere coincidence and, notwithstanding the testimony of the learned psychiatrist that a layman could not tell a homosexual from a normal individual, I am satisfied from all the evidence that the male persons in question were what are commonly termed "female impersonators." Female garb is not necessary for such a finding.'

"After reviewing all the testimony I recommend that defendant be found guilty of allowing, permitting and suffering its licensed premises to be conducted in such manner as to become a nuisance, pursuant to the charge herein.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered suspending defendant's license for sixty days. Re Rutgers Cocktail Bar, *supra*; Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1; Re The Paddock Bar, Inc., Bulletin 1159, Item 2 (affirmed sub. nom. Paddock Bar, Inc. v. Division of A.B.C., 46 N. J. Super. 405, App. Div. 1957)."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 15th day of June, 1959,

ORDERED that plenary retail consumption license C-282, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Savoy Club, Inc., t/a Anthony's, for premises 52 Church Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m. Monday, June 22, 1959; and it is further

ORDERED that any renewal for the 1959-60 licensing year or transfer of said license shall be and remain under suspension until 3 a.m. Friday, August 21, 1959.

WILLIAM HOWE DAVIS,  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

April 7, 1960.

BULLETIN 1333

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New Jersey State Library

7. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (FEMALE IMPERSONATORS ON PREMISES) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

David Sherman, Inc.  
t/a 1025 Bar and Grille  
1025 Atlantic Ave. and rear  
of 1023 Atlantic Avenue  
Atlantic City, New Jersey

Holder of Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Atlantic City.

LIABANCE  
CONCLUSIONS  
AND  
ORDER

Edwin H. Helfant, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On January 16, 17, 29 and 30, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.
- "2. On Saturday, January 30, 1960 at about 12:25 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., eight 7-ounce bottles of Schlitz beer, at retail, in their original containers for consumption off your licensed premises and at about 12:35 A.M. on said date, allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

ABC agents at the defendant's licensed premises in the late evening hours of January 16 and the early morning hours of January 17, observed at least eight female patrons and a waitress who, by their attire, speech, actions and general demeanor, appeared to be lesbians. The agents discussed these apparent lesbians with the bartender and commented upon the fact that there were a large number of them in the community and asked the bartender whether many of them came to these licensed premises, to which the bartender replied that all came there after the other establishments closed -- that it, the premises in question, is a regular hangout for them. These agents were again at the premises at about the same hours of January 29-30, at which time they observed at least ten males and eight females who, by their attire, speech, actions and general demeanor, appeared to be homosexuals and lesbians. The waitress who appeared to be a lesbian was also there.

On both occasions Frank Marchese, president of the corporate-licensee, acted as bartender until about midnight, at which time Thomas R. Hughes took over those duties. On this occasion the agents again had a discussion with the bartender concerning the presence of these persons in the licensed premises, the agents remarking that the male apparent homosexuals appeared to outnumber the apparent lesbians, to which the bartender replied that they get all kinds; that you never know who will walk in next but that they try to hold them down the best they can. Some of the patrons in question engaged in conduct of a degree not sufficient to warrant a disciplinary charge for permitting lewd and obscene conduct on licensed premises.

At about 12:35 a.m., two of the apparent homosexuals left the premises with eight "nip" bottles of beer which the bartender had placed in a bag and left on the floor near the bar, where it was picked up by one of the apparent homosexuals. One of the agents followed this person when he left the premises, apprehended him and brought him back to the premises with the beer. Thereupon the agents disclosed their identity to the bartender. The purchaser acknowledged the sale of the beer in question, stating that the purchase price was charged to his "credit account". The bartender verbally admitted that he sold the beer to this person and stated that the homosexuals and lesbians had been frequenting the premises since September 1959. During the course of this conversation, Marchese entered the premises, admitted that the homosexuals and lesbians frequented the premises and stated: "I know what they are, I didn't want them here but what could I do?" and stated further: "I know the place has become a 'gay bar' and that's what I didn't want to happen."

Defendant has no previous adjudicated record. Counsel for the licensee, in his letter, urges in alleged mitigation that Frank Marchese, its president, was compelled to cease supervision of his licensed business by reason of illness in October 1959, after which the undesirable element began to frequent the premises, and that he returned to active management about the end of January 1960, whereupon he discouraged this type of business to the extent that it no longer exists. These circumstances, even if accepted at face value, do not warrant the imposition of less than the minimum penalty imposed for violations of this nature. I shall suspend the defendant's license for a period of sixty days on Charge 1 (Re Thorn, Bulletin 1242, Item 3) and for fifteen days on Charge 2 (Re Saleeby, Bulletin 1323, Item 4), making a total suspension of seventy-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of seventy days.

Accordingly, it is, on this 3rd day of March, 1960,

ORDERED that Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Atlantic City to David Sherman, Inc., t/a 1025 Bar and Grille, for premises 1025 Atlantic Ave. and rear of 1023 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for seventy (70) days, commencing at 7:00 a.m., Tuesday, March 8, 1960, and terminating at 7:00 a.m., Tuesday, May 17, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

Mr. Gossweiler

June 13, 1960.

BULLETIN 1340

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New Jersey State Library

It further appearing that the effective dates for said suspension were to be fixed by subsequent order because appellants' premises were then closed (Bulletin 1319, Item 5); and

It appearing to my satisfaction that the premises have reopened for the 1960 season,

It is, on this 25th day of April 1960,

ORDERED that the five-day suspension imposed by respondent shall commence at 3 a.m. Monday, May 2, 1960, and terminate at 3 a.m. Saturday, May 7, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (FEMALE IMPERSONATORS ON PREMISES, UNESCORTED FEMALES SOLICITING DRINKS, OBSCENE LANGUAGE AND CONDUCT) - PRIOR RECORD - LICENSE SUSPENDED FOR 150 DAYS.

In the Matter of Disciplinary  
Proceedings against

LILLIAN M. HUNT & MARION MANZO  
t/a THE CASINO  
6 Bank Street  
Paterson 6, N. J.

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consumption  
License C-124, issued by the Board of  
Alcoholic Beverage Control for the  
City of Paterson.

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Duffy & Ruggiero, Esqs., by Vincent C. Duffy, Esq., Attorneys  
for Defendant-licensees

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On divers days between April 4 and May 30, 1959 you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons, females impersonating males, who appeared to be homosexuals to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and others; allowed, permitted and suffered the sale and service to and the consumption of alcoholic beverages by persons actually or apparently intoxicated in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

At 12:30 a.m., April 25, 1959, ABC agents G and M, who were in defendants' licensed premises, observed a blonde female hanging

on a man called Dominick who kept pushing her toward an elderly male who, he told her, in gutter language, was better equipped physically to accommodate her. His remark provoked laughter and Dominick, catching the eye of Agent G, nodded to a girl called Peggy. Peggy joined Agent G and asked him to buy her a drink. The agent complied and thereafter asked her if she would go out with him for illicit sexual purposes. Peggy replied, "I'll have to clear through Dominick." She then spoke to Dominick who had gone behind the bar to help the bartenders, Joe and Chris, after which she informed Agent G that she would have sexual relations with him for the price of \$15. When the agent told her that he had only \$9 with him, she remarked that he could get the other girls there for \$9, but that her price was \$15, and that if he wanted to get her when he came back to "just ask Dominick for Peggy". The agent agreed and departed. During the agents' visit they observed Joe, one of the bartenders, serve three glasses of whiskey to an intoxicated female.

At 12:01 a.m., May 2, 1959, Agents J and G visited defendants' tavern wherein Joe and Chris were tending bar and a man named Manzo walked about, apparently in charge of the premises. Peggy was seated at the bar and Agent G asked Joe if he would inform her that he wanted to buy her a drink. Joe did so and Peggy seated herself between Agents G and J and inquired of Agent G, "Are you ready tonight?" When the agent told her "not to rush it", Peggy had a whiskey and soda and played the juke box at the agent's expense. While Peggy was playing the juke box, Agent G remarked to Joe, "She's a hot number" and Joe walked away saying, "I don't know nothing." Joe then talked to Chris and Dominick who looked Agent G over carefully and when Peggy joined the agent, Joe told her that she had another selection on the juke box. Peggy joined a man at the juke box and shortly thereafter left with him. Agents G and J departed the premises and Agent M, who had been in the tavern all the while, heard Dominick tell a customer that the town was hot and that two federal men had been in the tavern that night.

At 10:30 p.m., May 8, 1959, Agent M visited defendants' licensed premises wherein he heard a female called Gerry engage in vile and obscene language and he saw Dominick seated at the bar between two females with whom he later left the premises.

At 11:15 p.m., May 15, 1959, Agents G and M returned to defendants' premises. Gerry was there and asked Agent M and another male to buy her drinks. Two females, one called Fanny, were seen drinking at the expense of a male who later followed them when they left the tavern. At 1:30 a.m., May 16, 1959, Fanny and the other female returned and solicited Agent G for drinks. When the agent told her that he was broke, they joined another male and drank at his expense.

At 1:25 a.m., May 30, 1959, Agents G and M entered defendants' tavern and sat next to each other at the bar. Lillian M. Hunt, co-owner of the licensed premises, was in charge and Albert Manzo (husband of Marion Manzo, the other co-owner) and Joe Milazzo were tending bar. Dominick was also present and there were 20 males and 10 females drinking at the bar. The agents, noting their dress and mannerisms, concluded that most of the women were lesbians and a female called Evelyn was seen to solicit drinks from a male. At this point the agents identified themselves and informed Mrs. Hunt of the violations. When Dominick, who identified himself as Dominick Delia, was questioned he told the agents that he was not employed on defendants' premises but helped out sometimes without pay.

The licensed partnership herein has no prior adjudicated record. However, when Marion Manzo held the license, I suspended it for 240 days effective June 24, 1957 for conducting her premises as a nuisance. Re Marion Manzo, Bulletin 1177, Item 8, and effective February 20, 1958 her license was suspended for 30 days by the local issuing authority for sale of alcoholic beverages to minors. In addition, Albert Manzo, husband of one of the partners herein, has a prior adjudicated record of violations, some similar to those charged herein, see Re Albert Manzo, Bulletin 1050, Item 1, and since he continues as an employee of the licensed partnership, as was the case in Re Marion Manzo, supra., his record, as well as that of Marion Manzo, will be considered in fixing the penalty herein. I shall, therefore, suspend defendants' license for a period of one hundred fifty days. Defendants' attorney advises me that the licensee herein will make immediate and sincere efforts to sell the premises at or before the expiration of any penalty that may be imposed. I strongly recommend such action, as another conviction may well result in revocation of the license.

Accordingly, it is, on this 20th day of April 1960,

ORDERED that Plenary Retail Consumption License C-124, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Lillian M. Hunt & Marion Manzo, t/a The Casino, for premises 6 Bank Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., Monday, May 2, 1960; and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 3:00 a.m., Thursday, September 29, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - UNLAWFUL TRANSPORTATION - DELIVERY WITHOUT INVOICE OR MANIFEST - PERMITTING USE OF PREMISES IN AID OF ILLEGAL ACTIVITY - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
CENTRAL LIQUOR CO., INC.	)	CONCLUSIONS
t/a CENTRAL LIQUOR CO., INC.	)	AND ORDER
601 Market Street	)	
Camden 2, N. J.	)	
Holder of Plenary Retail Distribution License D-21, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	)	

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Green and Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys for Defendant-licensee.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded non vult to Charges 1 and 3 and not guilty to Charge 2, such charges reading as follows:

- '1. On December 12, 1958, you transported alcoholic beverages in a vehicle not having a transit

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

June 29, 1960.

BULLETIN 1342

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New Jersey State Library

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

June 29, 1960.

BULLETIN 1342

1. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE  
(FEMALE IMPERSONATORS) - PRIOR RECORD OF PREDECESSOR IN INTEREST -  
LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

VIOLA S. HAJE )  
t/a THE PADDOCK INN )  
24 S. Warren Street )  
Trenton 8, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-177, issued by the Board of )  
Commissioners of the City of Trenton )  
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Stark and Stark, Esqs., by Sidney S. Stark, Esq., Attorneys for  
Defendant-licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On October 10, 16 and 17, 1959, you allowed,  
permitted and suffered your licensed place of  
business to be conducted in such manner as to  
become a nuisance, viz., in that you allowed,  
permitted and suffered thereon, males im-  
personating females, who appeared to be homo-  
sexuals; allowed, permitted and suffered such  
persons to frequent and congregate in and upon  
your licensed premises; and otherwise conducted  
your licensed place of business in a manner  
offensive to common decency and public morals;  
in violation of Rule 5 of State Regulation No. 20.'

"An ABC agent testified that on the early morning of October  
10 and on the evening of October 16, 1959, he and a fellow agent  
visited defendant's licensed premises, and on each occasion observed  
the defendant and Walter Bozek tending bar. On the second visit  
the agents remained on the premises until the early morning of  
October 17. On October 10th there were thirty-eight males and one  
female patron in the premises when the agents entered and the number  
remained constant until closing time. The agent testified that 95  
per cent of the males acted in an effeminate manner; that many of  
them wore tight chino pants, bulky knit sweaters with the sleeves  
rolled to their elbows and loafer shoes or low cut white sneakers.  
The males in question when walking swished their hips from side to  
side and walked 'on the balls of their feet'. Moreover, the agent  
observed that they permitted the wrist to remain limp when holding  
their glasses and that their cigarettes were held in a very dainty  
fashion. The males were in groups of 'from two to four' and they  
spoke in lispy, high-pitched voices, placed their hands on one  
another's arms or stroked each other's faces at the same time looking  
into each other's eyes in an endearing manner. At times they were

heard referring to one another as adorable, honey, doll or sweetie. On one occasion the agents testified that he overheard a conversation wherein one male patron remarked that he was in a blue mood and that whenever he came into defendant's premises he got depressed. Another remarked, 'Every time I come here I get an uncontrollable urge', while a third male was heard to say, 'Well, anyway, whenever we come here we lose our sex'.

"The agent aforementioned testified that he and the agent who had accompanied him on the previous visit entered defendant's premises at 10:10 p.m. on Friday, October 16, 1959. Fourteen males and one female were present but the patronage increased during the evening until about forty-five males and three females were in the premises. He testified that his observation of the patrons at the height of the evening showed that about the same percentage of males as on the prior visit behaved in an effeminate manner and that their actions, voices and expressions of endearment were similar to the description given by him on the occasion of his former visit. The agent testified that, during the evening, a person called Danny, seated at the bar immediately to his right, introduced himself and for about two hours engaged with him and his fellow-agent in conversation. Danny used effeminate expressions, fluttered his eyes and held his hands in a 'limp wrist fashion'. Danny discussed the establishment and some of the male patrons and their unnatural proclivities. The agent testified that, at times, both defendant and Bozek came over to wash glasses in the sink immediately in front of the agents. At one time Bozek came over and warned Danny to watch his language. Danny introduced the agent to defendant and, when the agent described the place as a 'nice gay spot', the defendant became flustered and stammered. She said, 'Gay? There's nothing gay in here'. When the agent said, 'It looks to us to be gay', the defendant immediately replied, 'They are not bothering anybody. They are their own kind. Some people go one place and other people go to another place. They are not bothering anybody and I don't see anything wrong'. The agent testified that, thereafter, he and his fellow-agent identified themselves to the defendant and to Bozek but both denied that there were any homosexuals in the place. When asked by the agent what in her opinion is a fag or a queer, defendant said, 'Someone who wears makeup, has long hair and wears dresses. I don't see anyone like that in here'. According to the agent, defendant admitted overhearing conversations while tending bar but denied any wrong doing on the part of anyone.

"It was stipulated by the attorneys for the parties hereto that if the other agent who had also been at defendant's premises at the times in question were called as a witness, his direct testimony would be substantially similar to that of his fellow-agent. Both agents were subjected to extensive cross-examination by the defendant's attorney without any material change in the testimony elicited on direct examination.

"Richard L. Chorba and Bernard DeAngelis, police officers employed by the municipality wherein the defendant's licensed premises are located, testified that they are familiar with the particular location because each had been assigned to that area for a considerable time. Moreover, the officers testified that when on night duty, they checked defendant's premises and had never seen anything unusual about the patrons.

"William Zupan testified that prior to his retirement on January 1, 1960, he was a member of the police department and for a period of fourteen months held the position of Alcoholic Beverage Inspector. He testified that in an official capacity he visited defendant's premises, especially during the late hours, and never found anything wrong. He testified that he observed male patrons

in the premises wearing sport clothing, others in business suits, while 'some of the fellows had Ivy League clothing on'. When asked for an explanation what he meant by 'Ivy League clothing', he said, 'Chinos. They are tight fitting clothing' and some wore bulky sweaters. Zupan further testified that he had never received a complaint about defendant's premises from his superior officers or from any city official and he never had any reason to believe that homosexuals gathered thereon.

"The defendant's witnesses aforementioned testified that they were not present on the dates mentioned in the charges preferred herein.

"George Charok testified that he is a daily patron of defendant's establishment and recalled that he visited defendant's premises about 12:20 a.m. on October 17, 1959 and remained there until closing time. He testified that there was nothing unusual about the male patrons and, although he saw some males dressed in tight chino pants, they did not swish their hips while walking, walk on the 'balls of their feet', hold their glasses in a dainty fashion with their fingers extended, hold in a dainty manner cigarettes, or speak in high-pitched voices. Furthermore, Charok testified that no one appeared to him to be a homosexual and although he knew Danny, the latter never made any immoral proposition to him. On cross-examination he was asked:

Q. But on most times -- or particularly with respect to the night you are talking about, you just went in there, bought your drinks, minded your own business, didn't bother with anybody, didn't look around or anything, you had your drinks and you went home. Is that right?

A. That's right.

"Frank Neneza, a bartender employed in another licensed premises, testified that occasionally he visits defendant's establishment late at night and had never seen anybody who appeared to him to be the least bit suspicious.

"William Southwick testified that on Saturday evenings he tends bar in defendant's premises and occasionally visits the premises on other nights. He stated that he has seen males dressed in chino pants and wearing bulky sweaters but has never observed any patron exhibiting effeminate characteristics or heard the use of endearing terms when talking to one another. Neither he nor Neneza were in defendant's premises at the times in question.

"Walter Bozek's testimony discloses that he tended bar on October 10th, 16th and early morning of October 17th 1959, and remembered seeing the agents on the 16th and 17th. On the latter dates the male patrons were dressed in business suits, some in working clothes and three or four had on chino trousers, but none of the patrons spoke with high-pitched voices or behaved in an effeminate manner. He knew that the defendant had been warned about permitting homosexuals on the licensed premises and, since the warning, he had put out 30 persons who appeared to be 'queers, fags and everything'. He claimed that no one answering the description given by the agents was in the premises. He testified that Danny came into the premises over a period of five or six months on the average of twice a week, but his appearance or speech was in no way effeminate. He stated that on one occasion he tapped Danny on the shoulder and requested that he stop swearing as a female was standing alongside of him.

"Defendant testified that on October 10th, she served the



agents and recalled that most of the customers in the premises were well dressed and that some rolled up the sleeves of their bulky knit sweaters when using the bowling machine. The defendant described many of her patrons as students who had been in service but now attended a local college and dressed as college boys. She testified that she never observed patrons swish their hips when walking, nor had she ever heard them lisp, speak in high-pitched voices or use terms affectionate toward one another. Defendant testified that she knew Danny but did not believe anything to be wrong with him, nor had he ever been offensive to her.

"Charok, with the exception of Bozek and herself, was the only witness produced by appellant who was in the licensed premises at the times in question. Charok testified that he did not recall seeing the agents and never saw anything unusual about the patrons. He did emphasize the fact that when in defendant's premises he ordinarily minded his own business, had his drinks and went home.

"It is clear from the evidence that none of the male patrons wore feminine attire. However, I am satisfied from the testimony of the agents that at the times in question, a large percentage of the male patrons by their walk, speech, actions and other mannerisms were homosexuals.

"In The Paddock Bar, Inc., Bulletin 1159, Item 2, wherein defendant was adjudged guilty of a charge similar to that herein, the following was stated:

'The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than a mere coincidence. Proper liquor control dictates that the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.'

"On affirmation on appeal from the determination of the Director in the aforementioned case, Judge Jayne, speaking for the Appellate Division of the Superior Court of New Jersey, (49 N.J. Super. 299) remarked:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird....'

"It is apparent from the testimony of the agents that the male persons in question were what are commonly termed 'female impersonators'. Female garb is not necessary for such a finding. Re Kaczka and Trobiano, supra.

"After careful examination of all the evidence in this case, I recommend that defendant be found guilty of allowing, permitting and suffering her licensed premises to be conducted in such a manner as to become a nuisance, pursuant to the charge preferred herein.

"Defendant has no prior adjudicated record. However, when

the license was held in the name of The Paddock, Inc., of which defendant was the secretary-treasurer and a shareholder thereof, effective February 2, 1959 the license was suspended by the local issuing authority for five days for sale of alcoholic beverages to a minor. I recommend that on the present charge defendant's license be suspended for sixty days. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2; Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1; Re The Paddock Bar, Inc., supra (sub. nom. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra). Because of the prior dissimilar violation within the past five years, I recommend that defendant's license be suspended for an additional five days, making a total suspension of sixty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the defendant's attorneys, pursuant to Rule 6 of State Regulation No. 16.

After carefully considering the entire record in this case, including the transcript of testimony, the Hearer's Report, the written exceptions and the written argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 5th day of May 1960,

ORDERED that Plenary Retail Consumption License C-177, issued by the Board of Commissioners of the City of Trenton to Viola S. Haje, t/a The Paddock Inn, for premises 24 S. Warren Street, Trenton, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Monday, May 16, 1960; and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m., Wednesday, July 20, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1345

JULY 19, 1960

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10. STATE LICENSES - NEW APPLICATION FILED.

It is, on this 27th day of May 1960,

ORDERED that the fifteen-day suspension heretofore imposed against appellants' license is hereby restored and reinstated to commence as scheduled, at 3 a.m. Wednesday, June 1, 1960, and continue in effect until 3 a.m. Saturday, June 11, 1960; that said suspension shall then be lifted until 3 a.m. Monday, June 13, 1960, at which time the suspension shall be reinstated and continue in effect until 3 a.m. Saturday, June 18, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE -  
PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

V. M. & S., INC.  
t/a FAMOUS BAR  
501 Pacific Avenue  
Atlantic City, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-216, issued by the Board of Commissioners of the City of Atlantic City. )

-----  
James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 2, 1959, January 2, 3, 16 and 17, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, viz., females impersonating males, to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents were at defendant's licensed premises on the late evening hours of December 2, 1959 and the late evening and early morning hours of January 2-3 and January 16-17, 1960. During the course of their first visit, two agents observed at least twelve women, no more than eight of whom were in the premises at one time, who, by their attire, speech, actions and general demeanor, appeared to be lesbians. On the second visit, two ABC agents observed in the premises a total of about six women who appeared to be lesbians. A bartender, in conversation with one of the agents, indicated that he was aware of the presence of such lesbians, who numbered about one-half of the patronage. On their last visit, the same agents who were there on January 2nd observed in the premises a total of about sixteen women who appeared to be lesbians. On this occasion the agents revealed the identity to James McDevitt, the bartender, who verbally admitted that he was aware that lesbians frequented the establishment.

Sylvia Rosner, an officer of the corporate-licensee, appeared on the scene, was informed of the violation and stated that she did not know that lesbians were not permitted to hang out in a tavern.

Counsel for the licensee has submitted a letter urging in alleged mitigation of the offense that the licensee neither seeks nor encourages the patronage of these persons but finds itself in the position where it is almost impossible to refuse to serve patrons of such type for fear of being accused of illegal discrimination, with no warrant or justification for barring them in the absence of specific grounds; that it is a virtual impossibility to cope with the problem.

Insofar as the licensee's claimed inability to prevent this type of patronage, the answer is to be found in the language of Re Bader, Bulletin 1073, Item 4, wherein it was stated:

"In any event it is simple common sense that a licensee is not helpless to rid himself of undesirable patrons; he is master in his own house if he sincerely wishes so to be. This principle has been referred to and publicized in the early days of this Division. Commissioner Burnett, in Re Dorsey, Bulletin 226, Item 11, quoted from the opinion of Judge, afterwards Justice, Fort, in State v. Lynch, 23 N.J.L.J. 45, wherein he said:

'A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor.'

"Decisions of this Division to the same effect are Re Rollka, Bulletin 142, Item 4, Re Plaza Hotel-O'Leary, Bulletin 188, Item 9, and Re Griffin, Bulletin 200, Item 7.

"A similar contention that homosexuals cannot be barred from licensed premises has recently been rejected. Re Kaczka & Trobiano, Bulletin 1063, Item 1."

Defendant has a prior adjudicated record. Effective April 30, 1956 the license was suspended for ten days by the local issuing authority for sale to a minor and sale to an intoxicated person. The lesbians who were observed in the premises do not appear to have engaged in any lewd and obscene conduct. There were many patrons present on each visit of the ABC agents who were normal in appearance and there is nothing to indicate that the premises were a haven for lesbians or deliberately designed as a recreational meeting place for them. Under the particular circumstances in the case, including the previous record for a dissimilar violation within the past five years, I shall suspend defendant's license for a period of thirty-five days. Cf. Re Siegel, Bulletin 1293, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 25th day of May 1960,

ORDERED that Plenary Retail Consumption License C-216, issued by the Board of Commissioners of the City of Atlantic City to V.M. & S., Inc., t/a Famous Bar, for premises 501 Pacific Avenue, Atlantic City, be and the same is hereby suspended for thirty (30)

days, commencing at 7:00 a.m. Tuesday, May 31, 1960, and terminating at 7:00 a.m., Thursday, June 30, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary  
Proceedings against

JOHN J. STEFANSKI  
t/a JACK'S TAVERN  
506 Washington Avenue  
South Amboy, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-23, issued by the Common  
Council of the City of South Amboy.

-----  
Defendant-licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that on March 12, 1960 he sold, served and delivered alcoholic beverages to a 17-year-old minor, in violation of Rule 1 of State Regulation No. 20.

"When the matter came on for hearing, the Division called as its witnesses Louis ---, his minor companion Richard ---, and an ABC agent who participated in the investigation. John J. Stefanski, the licensee, appeared pro se.

"Louis testified that he is 17 years of age; that at about 7:00 p.m. on March 12, 1960, he and Richard drove to defendant's licensed premises and parked the car across the street therefrom; that Richard gave him \$2 to purchase some wine; that he alone entered defendant's tavern and purchased from the licensee a quart bottle of muscatel wine and a pack of cigarettes; that the licensee, without requiring any written representation of his age, placed the quart of wine in a paper bag and accepted \$1.10 as payment for the wine; that he carried the package to the car and handed it to Richard and that both drove from the vicinity of defendant's premises and consumed the beverage.

"Richard testified that he gave Louis \$2 with which to purchase the wine; that he observed Louis go into the tavern empty-handed and return therefrom carrying a package; that Louis handed him the package which contained a quart bottle of muscatel wine which he and Louis consumed after leaving the vicinity of defendant's premises.

"The ABC agent testified that at 7:15 p.m., Wednesday, March 16, 1960, the two minors directed him and another agent to defendant's tavern; that both minors identified the premises wherein the wine was obtained and Louis identified the licensee as the person who had made the sale; that prior to going to the tavern both minors had described the premises and Louis had described the person who made the sale; that the descriptions corresponded with what he observed; that the licensee, while admitting that he was the only person who tended bar on the date alleged, claimed that he had not made the sale and that

STATE OF NEW JERSEY  
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1100 Raymond Blvd. Newark 2, N. J.

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December 19, 1960

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8. ACTIVITY REPORT FOR OCTOBER 1960.
9. DISCIPLINARY PROCEEDINGS (West New York) - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

New Jersey State Library

consider the Flo-Mae, Inc. violation in fixing the penalty herein. It is further recommended that an order be entered suspending the defendants' license for twenty days, the minimum penalty imposed for a sale of alcoholic beverages to a 17-year-old minor (Re Stefanski, Bulletin 1345, Item 7)."

The attorney for the defendant has advised me, in writing, that no exceptions would be taken to the Hearer's Report (Rule 6 of State Regulation No. 16).

After carefully considering all the facts and circumstances herein, I accept the Hearer's conclusion that the defendant is guilty of the charge and so find.

While I cannot agree with the reasons stated by the Hearer for disregarding the previous record of Flo-Mae, Inc., nevertheless, under all the circumstances, I believe that the twenty-day suspension is adequate in this case.

Accordingly, it is, on this 19th day of October 1960

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Lodi to Frank Carnevale and Louis Lembo, t/a The Rendezvous, for premises 6 Charles Street, Lodi, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, October 25, 1960 and terminating at 3:00 a.m., Monday, November 14, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (FEMALE IMPERSONATORS) - PRIOR RECORD - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against  
  
ESTYRE STEWART  
t/a MIDTOWN BAR & CAFE  
1719 Pacific Avenue  
Atlantic City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Atlantic City.

-----  
Paul M. Salsburg, Esq., and Edward I. Feinberg, Esq., Attorneys  
for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 11, 12, 18, July 23, 24 and 31, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and



otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on the dates set forth in the charge herein. The agents report that on their first visit, early Saturday evening June 11, 1960, there were about nineteen male persons present; that on their second visit, early Sunday morning June 12, 1960, there were about 69 persons (65 males and 4 females) present; that on their third visit, early Saturday morning June 18, 1960, there were about 28 persons (26 males and 2 females) present; that on their fourth visit, Saturday, July 23, 1960 from 10:45 p.m. to 12:05 the next morning, there were about 76 persons (60 males and 16 females) present; that on their fifth visit, early Sunday morning July 24, 1960, there were about 70 persons (55 males and 15 females) present; that on July 31, 1960 they made two visits (12:20 to 1:20 a.m. and 3:05 to 6:55 a.m.) to the premises, on the first of which there were 62 persons (50 males and 12 females) present and on the second visit there were about 50 males at the main bar and 15 males and females at the rear bar and tables; that on five of their visits a large percentage (50 to 90 per cent) of the males appeared to be homosexuals, as evidenced by their lispy, high-pitched voices, their walk and mannerisms, which sexual deviation they further displayed by holding one another's hand and addressing each other as "gay", "honey", "doll" and "adorable".

The investigation further discloses that on their last visit to the premises, one of the homosexuals had invited an agent and another had completed arrangements with a second agent, to engage in perverted sexual relations. On this visit the agents also observed two females who appeared to be lesbians.

Counsel for the licensee has submitted a letter urging in mitigation of the offense that the licensee neither sought nor encouraged the patronage of these persons; that during the summer months homosexuals usually came into the city in large numbers and particularly this past summer, when such deviates descended upon the city in droves and created an acute police problem as indicated by newspaper clippings of the local paper enclosed with counsel's letter; that the licensee did not know that she could order undesirable persons from the licensed premises without initiating legal proceedings; that it was the policy of the police in the past that they would not aid in removing a patron from a licensed premises unless a sworn complaint was filed and a warrant was issued; that she and other licensees have been afraid and reluctant to take such action for fear of subjecting themselves to a civil suit for damages for defamation of character or false arrest; that on July 3, 1960, following a ten-day suspension by the local issuing authority for a similar offense as charged herein, she hired a man to stand at the door and instructed him to bar homosexuals from the licensed premises and that the aforesaid ten-day penalty, coming in the heart of the summer season, entailed a substantial loss to the licensee. However, ignorance of the law or the regulation does not afford any excuse for the violation. Licensees and their employees must know the rules and scrupulously adhere to them. Cf. Re Krynicki, Bulletin 1238, Item 5.

Defendant has a prior adjudicated record. Effective April 28, 1958, I suspended her license for twenty-five days for sale to minors (Re Stewart, Bulletin 1227, Item 4) and effective June 24, 1960 the license was suspended for ten days by the local issuing authority for a violation similar to that charged herein. Considering all the circumstances of the case including the prior record, the plea, and the apparent effort made by the licensee to bar these undesirables from the premises, I shall suspend defendant's license for a period of sixty days.

Accordingly, it is, on this 24th day of October 1960,

ORDERED that Plenary Retail Consumption License C-229 issued by the Board of Commissioners of the City of Atlantic City to Estyre Stewart, t/a Midtown Bar & Cafe, for premises 1719 Pacific Avenue, Atlantic City, be and the same is hereby suspended for sixty (60) days, commencing at 7:00 a.m., Monday, October 31, 1960 and terminating at 7:00 a.m., Friday, December 30, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - EMPLOYING MINOR WITHOUT PERMIT - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary  
Proceedings against

GABRIEL'S TAVERN, INC.  
57 Seventh Avenue  
Newark 4, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-525, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Newark.

-----  
Mario V. Farco, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

- '1. On May 3, 1960, at your licensed premises, you sold and offered for sale, at retail, directly or indirectly, three 12-ounce cans of Ballantine beer, a malt alcoholic beverage, at less than the price thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.
- '2. On May 3, 1960 and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person under the age of twenty-one (21) years, viz., Gabriel ---, age 19; contrary to and in violation of Rule 3 of State Regulation No. 13.'

"At the hearing held herein the Division called as its witnesses Gabriel --- (age 19) and two ABC agents, hereinafter referred to as Agent O and Agent D.

"Gabriel testified that he was born on March 5, 1941, and, hence, was 19 years of age at the time of the alleged violations.

"Agent O testified that on May 3, 1960, at about 11:30 a.m., he and Agent D arrived in the immediate vicinity of the defendant's licensed premises which he alone entered while his companion waited outside; that he took a seat at the bar and was served a glass of beer by Vincent Contaldi (president of the corporate-licensee); that at about 11:55 a.m., Vincent Contaldi, in response to his request

STATE OF NEW JERSEY  
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December 27, 1960

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5. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE  
(HOMOSEXUALS) - PRIOR RECORD - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

The Paddock Bar, Inc.  
t/a Paddock Bar )  
1013 Main Street )  
Asbury Park, New Jersey )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption )  
License C-31, issued by the City )  
Council of the City of Asbury Park. )

ORDER

-----  
J. George Smith, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Wednesday night August 3 and early Thursday morning August 4, Saturday night August 6 and early Sunday morning August 7, Thursday night August 11 and early Friday morning August 12 and Friday night August 12 and early Saturday morning August 13, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, viz., males impersonating females, to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents were at defendant's licensed premises on the late evening hours of August 3 and the early morning hours of August 4, and at similar hours on August 6-7, August 11-12 and August 12-13, 1960. During the course of their first visit, the agents observed 26 men and three women present, of whom almost all of the men, by their attire, speech, actions and general demeanor, appeared to be homosexuals. On their second visit the agents observed approximately 75 men in the premises, most of whom appeared to be homosexuals. On the third visit the agents observed a total of 22 men, over half of whom appeared to be homosexuals.

When the agents entered on the last visit they observed approximately 20 men there, 17 of whom appeared to be homosexuals, and during the course of the evening, observed a total of 40 men, of whom about 35 appeared to be homosexuals. At about 11:15 p.m. a woman, later identified as Marion R. Brown, president and treasurer of the corporate-licensee, came into the premises and mingled with the apparent homosexuals. When one of the agents remarked to her about the presence there of a "gay crowd of kids", she replied, "They are all over 21". The agents then said, "They call themselves kids, all these queers -- most of them in here are all a bunch of queers", whereupon Mrs. Brown replied, "They are all nice -- we have no trouble -- nobody in here bothers anybody".

At the conclusion of this conversation, the agents identified themselves to Mrs. Brown and called her attention to the past record of similar violations at the premises, whereupon she stated, "What am I going to do? How can I refuse them drinks? Can I ask them if they

are queer? I'd like to know from you how can I refuse them? I've talked it over with my partner and even thought we might close up for a while in the beginning of the season to encourage the queers to go somewhere else and drink. My partner and I decided to stay open because there was nothing we could do to keep them out. I myself, cannot determine who is an apparent homosexual and who is not."

The past record of defendant-licensee referred to consists of the suspension of its license by the Director for sixty days, effective March 4, 1957, and the suspension of its license by the Director for 115 days, effective December 2, 1957, both for violations similar to that here involved. Additionally, its license was suspended for a mislabeled beer tap, effective September 16, 1947, which is not being considered in fixing the penalty because it was committed over five years ago.

On the basis of three similar violations within the past five years, a strong inference would be justified that the corporate officers deliberately carried on the improper activities at the licensed premises without regard to or being deterred by the successive penalties and which well merit revocation of its license. However, the conversation between Mrs. Brown and the agents would seem to indicate that its officers believe themselves helpless to discourage the patronage of apparent homosexuals and were not deliberate violators. That such officers were mistaken in their notion that they were not masters in their own establishments and that they profess that they were unable to recognize individual apparent homosexuals cannot be accepted as an excuse. ABC agents, who have no special faculties in that respect, were readily able to ascertain and recognize the apparent homosexuals. In any event, any such problems must be solved by the licensee, which is under a strict obligation to conduct an orderly establishment.

Counsel for the licensee, when entering the plea in the case, represented that Mrs. Brown is a retired schoolteacher of 25 years service and is the principal stockholder, with all her life savings invested in the business. Mrs. Brown signed a representation that if given the opportunity to remain in business, she will conduct the premises as a neighborhood tavern and will not permit or allow or be subjected to any charges as presently set forth.

I shall accept her assurances for the present at face value and, under the circumstances of the case, will give her the benefit of the doubt and consider that the defendant-licensee did not intend deliberately to violate the injunction not to permit its licensed premises to be a haven for homosexuals. I shall, therefore, suspend its license for the period of one hundred eighty days.

Accordingly, it is on this 3rd day of November 1960,

ORDERED that Plenary Retail Consumption License C-31 issued by the City Council of the City of Asbury Park to The Paddock Bar, Inc., t/a Paddock Bar, for premises 1013 Main Street, Asbury Park, be and the same is hereby suspended for one hundred eighty (180) days, commencing at 3:00 a.m., Monday, November 14, 1960 and terminating at 3:00 a.m., Saturday, May 13, 1961.

  
William Howe Davis  
Director

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1374

January 19, 1961.

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New Jersey State Library

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(FEMALE IMPERSONATORS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

Murphy's Tavern, Inc.  
135 Mulberry Street  
Newark 2, New Jersey,

Holder of Plenary Retail Consumption  
License C-461 (for the 1959-60  
licensing year), issued by the  
Municipal Board of Alcoholic Beverage  
Control of the City of Newark.

CONCLUSIONS

AND

ORDER

-----  
George R. Sommer, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Two separate proceedings were instituted against defendant herein. On November 19, 1959, the following charge was served upon defendant:

On October 24, 30 and November 8, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered thereon persons, males impersonating females, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"Defendant pleaded not guilty and hearings upon said charge were held on March 14, 1960, and March 17, 1960.

"On May 20, 1960, before any determination was made in the first proceedings, the following additional charges were served upon defendant:

On May 6, 13 and 14, 1960, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered male persons on your licensed premises to engage and participate in foul, filthy and obscene conduct and to solicit and make overtures for and arrangements with other male persons on your licensed premises for acts of perverted sexual relations; in violation of Rule 5 of State Regulation No. 20.

On May 6, 13 and 14, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered persons, males impersonating females, who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner

offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20.

"Defendant pleaded not guilty to the additional charges and hearings thereon were held on July 14, 1960, and September 7, 1960.

"At the hearings held upon the original charge, two ABC agents (hereinafter identified as Agent R and Agent S) testified on behalf of the Division.

"Agent R testified that, acting upon a complaint that defendant's premises were an alleged hang-out for homosexuals, he and Agent S visited the premises on October 24, October 30 and November 8, 1959. He testified that on their first visit they entered about 9:40 p.m. and left about 10:55 p.m.; that Joseph Yeachshino, Cal Lubertazzi and another male were tending bar; that about twenty of the forty male patrons then present attracted his attention because of their effeminate actions and mannerisms, and that one of these patrons carried a white square case with flowered designs. He testified that on their second visit they entered about 9:10 p.m. and left about 11:30 p.m.; that Joseph and Cal and other males were tending bar; that about fifteen of the forty male patrons attracted his attention because of their effeminate actions and mannerisms; that he saw some of them holding hands and some of them kissing. He testified that on their third visit they entered about 12:35 a.m.; that Joseph, Cal and Theodore Hirsch were tending bar; that about twenty of the seventy male patrons attracted his attention because of their effeminate actions and mannerisms; that some of these patrons hugged each other, held hands and talked in high-pitched voices; that about 2 a.m. he said to Cal, 'All the kids were in tonight', to which the bartender replied, 'Yes; you can see that for yourself'; that he and Agent S then identified themselves and that Cal said, during subsequent questioning, that 'You can see that in any straight bar. I can serve them as well as I can serve you.'

"When Agent S was called, it was stipulated that his testimony on direct examination would be the same as that given by Agent R. On cross examination he stated that the mannerisms of and conversations between the patrons referred to led him to believe that they were homosexuals.

"On behalf of defendant, Joseph Yeachshino testified that he was tending bar on each of the evenings in question. He denied that he knew any of the patrons were homosexuals. He admitted that some of the patrons had feminine characteristics but stated that none of them annoyed other patrons or acted in an improper manner. Carmine (heretofore referred to as Cal) Lubertazzi testified that he was tending bar and saw the agents in the premises on each of the evenings in question. He testified that he never saw any persons who were known to him to be homosexuals on the premises. He admitted that some patrons spoke with high-pitched voices but denied that any patron had acted in an improper manner. He denied seeing a male patron with a female handbag. As to the conversation with Agent R on November 8, he testified that, when the agent referred to 'kids' in the premises, he believed the agent was referring to young people and not to homosexuals. He denied the balance of the conversation. Theodore Hirsch testified that he was tending bar on November 8 but did not observe any improper conduct or see any patrons of the type described by the agent.



"On behalf of defendant, Jack Tractenberg testified that he is vice-president of defendant corporation. He stated that he was present on October 24 and 28, and that a few of his patrons may have some effeminate characteristics but that they never bother other customers. He testified that the Newark Police Department had defendant's premises under surveillance for undesirables for about six months in 1959 but were unable to identify any undesirables. Al Thoma (an athletic director) testified that it is not possible to conclude that a person is a homosexual merely because he has some female characteristics.

"At the hearings held upon the additional charges, four ABC agents testified. The principal testimony was given by one of the agents hereinafter identified as Agent D. He testified that he entered the premises at about 9:40 p.m. on May 6, 1960; that Cal Lubertazzi, Jack Schultz and Bruce Adams tended bar during the evening; that about one-half of the thirty-five patrons attracted his attention because of effeminate mannerisms; that some of these patrons sat in groups and referred to each other as 'Mary', 'Drag', 'Honey' and 'Dearie'; that one patron spilled a drink and another patron said 'Oh! My sister has big elbows'; that he had a conversation while seated at the bar with a male patron who introduced himself as James --- and who rubbed his leg during the conversation and asked him if he was going to return when he left the premises about 11:30 p.m.

"Agent D further testified that he returned to the premises at about 9:50 p.m. on May 13, 1960; that Cal, Jack and Bruce tended bar during the evening; that about thirty-five patrons were in the premises when he entered, and that the number thereafter increased to sixty; that about ninety per cent. of these patrons attracted his attention because of their effeminate mannerisms; that he sat at the bar with James --- who introduced him to other males known as Bill, Joe and Fred; that, while one or more of the bartenders were nearby, Bill and Joe talked about orgies they had conducted with other males, and Fred asked if he could sleep with the agent. Agent D further testified that, during the evening, he told Cal he was going to have a sex orgy and Cal walked away; that about midnight he asked the bartender Bruce for a drink and told him that he and James --- were going out for a sex orgy; that he and James --- left the premises together at about 12:20 a.m. and were stopped outside by other ABC agents. When the agents and James --- returned to the premises, the agents identified themselves to Bruce and Jack. Agent D testified that, during subsequent conversation, James --- stated that he and the agent were only going for a drink elsewhere and that Bruce admitted that he had heard the conversation about sex orgies but thought they 'were only kidding.' The testimony of Agent D as to the mannerisms of the majority of the patrons was substantially corroborated by two other ABC agents who were in and out of the premises during the evening. One of these other agents testified that he heard some of these patrons use the words 'Honey', 'Doll', 'Mary', when referring to one another.

"On behalf of defendant, Jack Schultz testified that he is manager of the premises; that he was present on both evenings and that nothing improper occurred on either evening. Carmine Lubertazzi testified that nothing unusual occurred on May 6; that on May 13 he saw Agent D and James --- in a group; that nothing unusual occurred and that Agent D tried to converse with him but he ignored the agent. He denied that he saw any homosexuals in the premises, but admitted that some patrons had effeminate mannerisms. James --- came from his home in another State and stated that he was testifying 'to clear my name.' It appears that he is about thirty years of age, unmarried, holds a responsible position and apparently has a fine educational background. He testified that

he resided in Newark for a few months in the early part of 1960; that on May 6 he was in the premises when Agent D entered and sat beside him; that they conversed on general topics for about one and one-half hours; that there was nothing improper about his conduct, and that they did not discuss abnormal sex relations. He further testified that on May 13 he was in the premises when Agent D entered and sat beside him; that they conversed for about two hours; that the agent also conversed with another group at the bar, but that there was no conversation about abnormal sexual activity between the agent and him or between the agent and those in the other group, none of whom he knew. He admitted that he left at about the same time as Agent D, but stated that they left to have a drink elsewhere before he went home. He denied he was a homosexual.

"In his briefs defendant's attorney calls attention to the admitted fact that all male patrons wore male attire. He argues that the evidence does not establish that any patron was in fact a homosexual and that the evidence is not sufficient to establish the nuisance charges. These arguments are fully answered in the decision of Judge Jayne in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App.Div. 1957), wherein it is said:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"Moreover the nuisance charges are established by the evidence which shows that these persons were permitted to congregate on the premises habitually and in inordinate numbers.

"After reviewing the evidence and the briefs submitted, I conclude that the Division has established defendant's guilt as to all charges by a fair preponderance of the believable evidence. It is recommended, therefore, that defendant be found guilty as charged.

"Defendant has a prior record. Effective March 15, 1954, its license was suspended for twenty days for sales to intoxicated persons. However, since this dissimilar violation occurred more than five years ago, it will not be considered in fixing penalty herein. Under all the circumstances of this case, it is recommended that an order be entered suspending the license which defendant holds for the 1960-61 licensing year for a period of sixty days. Re The Paddock Bar, Inc., Bulletin 1159, Item 2; Re Savoy Club, Inc., Bulletin 1289, Item 7."

Written exceptions to the Hearer's Report and written argument as to said exceptions were filed with me by defendant's attorney, pursuant to Rule 6 of State Regulation No. 16.

After carefully considering all the evidence herein and the briefs, exceptions to Hearer's Report and written argument filed by defendant's attorney, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I find defendant guilty as charged. I shall suspend defendant's license for a period of sixty days, as recommended.

Accordingly, it is, on this 27th day of December 1960,

ORDERED that plenary retail consumption license C-461, issued for the 1960-61 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Murphy's Tavern, Inc., for premises 135 Mulberry Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, January 9, 1961, and terminating at 2 a.m. Friday, March 10, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Alfred Gavenas  
t/a Circle Inn  
250 Main Street  
West Orange, N. J.,

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption  
License C-43, issued by the Municipal  
Board of Alcoholic Beverage Control  
of the Town of West Orange.

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On Thursday, October 27, 1960 and on divers days prior thereto, you allowed, permitted and suffered gambling, viz., the making and accepting of bets on horse races and in lotteries in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On Saturday, October 22, 1960 and on divers Saturdays prior thereto, you allowed, permitted and suffered a lottery commonly known as a 'horse-race pool' to be conducted in and upon your licensed premises and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On October 22, 1960 Michael O'Boyle (the bartender) sold chance tickets, at one dollar each, on a "horse-race pool" to an ABC agent and patrons on the licensed premises. On October 27, 1960, aforesaid agent, accompanied by other agents, returned to the licensed premises and placed a six-dollar bet on a horse-race with Alfred Gavenas (the licensee). As prearranged, local police, accompanied by other ABC agents, came into the licensed premises and found two white slips of paper bearing names and numbers and six one-dollar bills (which had been marked by the agents) in the possession of Gavenas. On the back bar one of the police officers found the horse-race slip given to Gavenas by the agent, writings of three other horse-race bets and a "scratch sheet" dated October 27, 1960. In a trash can behind the bar the officer also found a sheet of paper bearing the names of the players who participated

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

DP

BULLETIN 1378

March 1, 1961

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New Jersey State Library

the cited section. That section does not define the word "hotel"; and while the question and issue were not raised in this appeal I may here state, in passing and without impropriety, that I interpret R.S. 33:1-12.20 as contemplating and including an exception in favor of "motels" as well as "hotels". (Cf. Schermer v. Fremar Corporation, 36 N.J. Super. 46 (1955).)

I find no legal merit in the appellants' reason (c).

Accordingly, it is, on this 24th day of January, 1961,

ORDERED that the action of the respondent Mayor and Council be and the same is hereby affirmed, and that the appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS PERMITTED ON PREMISES) - SALES TO INTOXICATED PERSONS - PERMITTING OBSCENE LANGUAGE ON LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 155 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

EDNA HAFNER )  
t/a EDNA'S RENDEZVOUS )  
45 West Broadway )  
Paterson 1, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-250, issued by the Board )  
of Alcoholic Beverage Control for the )  
City of Paterson. )

-----  
James F. Dougherty, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On July 2, 19, 20, 29 and 30, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered thereon persons who appeared to be homosexuals, viz., females impersonating males, and you allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.
- "2. On the above mentioned dates, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually and apparently intoxicated and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"3. On July 2, 29 and 30, 1960, you allowed, permitted and suffered in and upon your licensed premises foul, filthy and obscene language; in violation of Rule 5 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on the dates set forth in the charges herein. On the first visit, early Saturday morning, July 2, 1960, the agents observed that three of the six females in the licensed premises appeared to be lesbians in that they wore male attire, had no make-up, had short cropped hair and spoke and acted in a masculine manner. The agents observed a female called Betty with disheveled hair, red and glassy eyes, whose speech was slurred and incoherent, enter the premises and while endeavoring to walk to the bar, staggered and had difficulty maintaining her balance. Despite her apparent condition, the bartender called Sal (Salvatore Sampogna) served her several mixed drinks which contained whiskey. Betty and Sal used foul and filthy language during an argument which resulted from her contention that he failed to put whiskey in her drinks. Sal turned to the agents and said, "She's so loaded she don't know she's got a shot in her drink and I gave her a double."

Agents again visited defendant's premises late Tuesday evening, July 19th, and remained there until 12:45 a.m. the following morning. The agents observed five apparent lesbians on the premises who were dressed in a similar manner to those seen by the agents in defendant's premises on their previous visit. While the agents were there an apparent lesbian entered, followed by a female wearing feminine attire, and, after an exchange of words between them, the one conventionally attired left the premises. The apparent lesbian said to Sal, "I had a date with her tonight and stood her up. I think she's a little burned", to which Sal remarked, "Ain't love grand." The agents observed a woman whose appearance indicated that she was intoxicated take a seat at the bar and Sal served her a glass of beer. When she left the establishment, one of the agents commented on the woman's condition and Sal stated, "I haven't seen her sober yet, she's always loaded."

On the agents' third visit late Friday evening, July 29, 1960, Sal and defendant were tending bar. Nine apparent lesbians, who were dressed and deported themselves in the same manner as those described by the agents on their prior visits, were in the premises. Four of these patrons were referred to as "Betty", "Pat", "Sis" and "Rusty". During the evening, Sal frequently used foul and filthy language. A male, who was observed staggering when entering the premises, came to the bar where Sal served him two glasses of beer. The male then went to the men's room where one of the agents found him asleep on the floor. The agent told Sal about the man's condition and Sal said, "Let him sleep. He gets that way from beer only, doesn't touch whiskey. Every so often he goes on these binges, but a hell of a nice guy when he's sober." Sometime thereafter, Sal instructed a patron to notify the man in question that it was closing time and, when the patron awoke him, the latter staggered to a table immediately next to the men's room. Sal walked over and after inquiring how he felt, served him a glass of beer.

After the man consumed a portion of the beer, one of the agents seized the glass and the agents identified themselves to Sal and to the defendant. When questioned Sal said that the man had been sleeping for the past hour and that he (Sal) questioned him before serving the glass of beer. When asked about the lesbians in the premises, Sal said that they never bother anybody. Furthermore, he stated that he is not a specialist in determining who is and who is not a lesbian. When reminded about the filthy language he had used, Sal said, "Oh well, that's the way you have to talk to some of these people,

they'd never listen otherwise."

In conclusions dated February 2, 1959 in which an order was entered suspending defendant's license (Bulletin 1267, Item 3), the defendant, through her attorney, submitted an affidavit in attempted mitigation of penalty wherein, among other things, she stated because of her age and physical condition, she intended to dispose of her business. I said at that time that: "Defendant's suggestion to dispose of the licensed business seems to be well taken. For her to continue the operation of the establishment without her presence there in a supervisory capacity, in all probability would lead to future violations." Sometime thereafter, her license was again suspended for thirty-five days for another violation. Bulletin 1340, Item 7. Now the defendant has submitted another affidavit in attempted mitigation of penalty wherein she states: "I have been attempting to sell my license and place of business for the past 19 months, having advertised the same for sale in the public press. It is necessary that I dispose of my license by sale as I have been under the doctor's care for a considerable time." By the manner in which her licensed premises is conducted, it is advisable that the defendant make every effort possible to disassociate herself from the liquor business.

The prior record of defendant includes a suspension of her license by the Director for twenty-five days, effective October 15, 1956, for selling alcoholic beverages to minors when she held a license in Ringwood Borough. Bulletin 1139, Item 10. Effective February 9, 1959 her license for the premises where she now conducts her business was suspended by the Director for the balance of its term for selling alcoholic beverages to a minor and permitting immoral activities (arrangements for prostitution) and the congregation of lesbians on the premises. Bulletin 1267, Item 3, supra. Effective May 2, 1960 her license was again suspended by the Director for thirty-five days for sale of alcoholic beverages to minors, one of whom was 17 years of age. Bulletin 1340, Item 7, supra.

The minimum penalty for allowing a licensed place of business to be conducted so as to become a nuisance by permitting homosexuals (females impersonating males) to congregate on the premises (Charge 1) is sixty days. Re The Paddock Bar, Inc., Bulletin 1159, Item 2; affirmed sub. nom. Paddock Bar, Inc. v. Division of ABC, 46 N.J. Super. 405 (App. Div. 1957). Where a prior similar violation has occurred within five years, a one hundred-twenty day penalty is warranted. Re Paddock Bar, Inc., Bulletin 1202, Item 5. As to Charge 2, I shall suspend defendant's license for twenty days (Re Mele, Bulletin 1354, Item 8) and with reference to Charge 3, for another ten days (Re Spillane, Bulletin 1259, Item 7). Because of two dissimilar violations occurring within five years (Re Richman, Bulletin 1186, Item 10), I shall add another five days, making a total suspension of defendant's license of one hundred-fifty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of one hundred-fifty days.

Accordingly, it is, on this 16th day of January 1961,

ORDERED that Plenary Retail Consumption License C-250, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Edna Hafner, t/a Edna's Rendezvous, for premises 45 West Broadway, Paterson, be and the same is hereby suspended for one hundred-fifty (150) days, commencing at 3:00 a.m., Monday, January 23, 1961, and terminating at 3:00 a.m., Thursday, June 22, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

Mr. Gossweiler

DP

BULLETIN 1392

July 11, 1961

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5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - APPLICATION OF OWNER FOR RETURN OF MOTOR VEHICLE DENIED FOR FAILURE TO ESTABLISH GOOD FAITH - MOTOR VEHICLE ORDERED SOLD - CLAIM OF INNOCENT LIENOR RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.
6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - CLAIMS OF INNOCENT LIENORS RECOGNIZED - FURNISHINGS, EQUIPMENT, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.
7. DISCIPLINARY PROCEEDINGS (Paterson) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED TRANSPORTATION OF STOLEN ALCOHOLIC BEVERAGES - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT LIENOR.
9. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1392

July 11, 1961

1. APPELLATE DECISIONS - SKIP'S BAR, INC. v. NEWARK.

SKIP'S BAR, INC.	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK,	)	
Respondent.	)	

-----  
Irving J. Zwillman, Esq., Attorney for Appellant.  
Vincent P. Torppey, Esq., by Richard A. Walsh, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on February 15, 1961, whereby it suspended appellant's License C-323 for 180 days after finding appellant guilty of the following charge:

"On Friday night, October 7th, Saturday night October 8th, Sunday night October 9th, Friday night October 14th, Saturday night October 15th, Friday, October 21st, 1960, in early morning, Saturday October 22nd in evening, Sunday night October 23rd, early hours of Thursday, October 27th, early morning hours of Friday, October 28th, Saturday October 29th, during late evening hours, and Sunday night, October 30th, 1960, that you allowed, permitted and suffered your licensed place of business to be conducted in such manner so as to become a nuisance, in that you allowed, permitted and suffered, persons who appeared to be homosexuals, viz: males impersonating females, to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and morals, public morals; in violation of Rule 5 of State Regulation #20."

"Appellant's premises are located at 204 Mulberry Street, Newark.

"Upon the filing of the appeal the Director entered an order on February 23, 1961, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

"In its petition of appeal appellant alleges that the finding of guilt was arbitrary, capricious and against the weight of the evidence.

"The appeal was heard de novo on March 16, 1961, upon the transcript of the proceedings before respondent Board and upon additional evidence presented at the hearing of the appeal. See

Rules 6 and 8 of State Regulation No. 15.

"The transcript of the proceedings before the Board discloses that the testimony as to the alleged violations was given by Detective Walter Azgiery, Jr., of the Newark Police Department, and it was stipulated that the testimony of Detective Edward Batzinger of the Newark Police Department would be the same as that given by his fellow officer. Detective Azgiery testified that he and Detective Batzinger visited appellant's premises on each of the dates mentioned in the charge; that on October 7 there were twenty-one women and thirty-two men (six of whom were suspected homosexuals) on the premises; that on October 8 there were twelve women and twenty-four men (two of whom were suspected homosexuals) on the premises, and that on October 9 there were sixteen women and twenty-four men (nine of whom were suspected homosexuals) on the premises. The witness testified that on October 7 and October 9 he spoke to James Carter, Jr. (president of appellant corporation), who was tending bar, with reference to the type of clientele on the premises and advised him to try to eliminate the condition there. At the hearing before the Board, four of these suspected homosexuals appeared in response to subpoenas and police records show that one of them was convicted in 1958 as a female impersonator.

"Detective Azgiery further testified that, on each of their subsequent visits between October 14 and October 30, there were between three and seven suspected homosexuals on the premises out of a total patronage which varied between eighteen and sixty-eight. He testified that these suspected individuals were make-up and called each other 'dear' and 'darling.' On cross-examination Detective Batzinger testified that he concluded that these suspected individuals were homosexuals because of:

'their manner of speech, their speech, and quite a number of times we heard one call the other honey and dear, not like normal fellows: From their walk and hip swinging, and more sway of their wrists than a woman does.'

"On behalf of appellant, James Carter, Jr., testified at the hearing below that appellant has held a license for more than two years and has no prior record. He admitted that the two detectives had visited the premises on many occasions during October 1960, but denied that either detective had ever told him he was catering to homosexuals or instructed him to keep them out. He denied that he knew any of the suspected homosexuals who were present at said hearing. James Carter, Jr., also testified at the hearing of the appeal, but the testimony then given by him is substantially the same as that given by him at the hearing before respondent Board.

"After carefully considering all the testimony, I believe the testimony of Detective Azgiery that he spoke to Mr. Carter about the type of clientele on October 7 and October 9. There is nothing to indicate that the suspected individuals who were on the premises on October 7 and October 9 were the same individuals who were on the premises on subsequent dates during October. However, the evidence of the detectives as to the mannerisms of the suspected individuals who were present on each visit is sufficient to establish appellant's guilt. In Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957), Judge Jayne said:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we

identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"I conclude that the preponderance of the believable evidence establishes the guilt of appellant. I find no basis for reversal and no sufficient reason for modification by the Director of the penalty imposed by respondent. The plea for modification should be made, if at all, to respondent. Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2.

It is recommended, therefore, that an order be entered affirming respondent's action, vacating the order staying the suspension and fixing the effective dates for the one-hundred-and-eighty day suspension imposed by respondent."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

After carefully considering the evidence and exhibits herein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of April 1961,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the one-hundred-and-eighty-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored against License C-323 held by Skip's Bar Inc., for premises at 204 Mulberry Street, Newark, to commence at 2 a.m. Wednesday, May 3, 1961, and to continue in effect until the expiration of said license at midnight June 30, 1961; and it is further

ORDERED that any renewal for the 1961-62 licensing year, or transfer of said license, shall be and remain under suspension until 2 a.m. Monday, October 30, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

2. STATE REGULATIONS - REGULATION NO. 34 - SPECIAL SOCIAL AFFAIR PERMITTEES ARE RETAILERS WITHIN CONTEMPLATION OF REGULATION - ALCOHOLIC BEVERAGES OTHER THAN MALT MAY BE DELIVERED TO PERMITTEES ONLY AT CURRENTLY EFFECTIVE WHOLESALE PRICE.

June 12, 1961

TO ALL MANUFACTURERS AND WHOLESALEERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES (V, VL, S, SL, R, W, WL AND WW LICENSEES)

Question has been raised whether manufacturers and wholesalers may furnish alcoholic beverages other than malt alcoholic beverages to organizations holding special social affair permits wholly gratuitously or at a price less than that listed in the Wholesale Price List published pursuant to State Regulation No. 34.

R.S. 33:1-89 and 90 provide:

"Price discrimination by sellers to retailers forbidden.  
It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to discriminate in price, directly or indirectly, between

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1393

July 26, 1961

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2. DISCIPLINARY PROCEEDINGS (Paterson) - CONDUCTING BUSINESS AS A NUISANCE - FEMALE IMPERSONATORS - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR 55 DAYS.
3. DISCIPLINARY PROCEEDINGS (Palisades Park) - FAILURE TO FILE REPORTS WITH DIVISION OF TAXATION - FAILURE TO FILE NOTICE OF CHANGES IN APPLICATION - EMPLOYING UNQUALIFIED PERSON - LICENSEE CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR LIFTING OF SUSPENSION AFTER 45 DAYS UPON CORRECTION.
4. DISCIPLINARY PROCEEDINGS (Kenilworth) - SALES TO MINORS - PERMITTING CONSUMPTION OF ALCOHOLIC BEVERAGES BY MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.
5. DISCIPLINARY PROCEEDINGS (Kenilworth) - ORDER POSTPONING SUSPENSION PREVIOUSLY IMPOSED.
6. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library

ORDERED that any renewal for the 1961-62 licensing year, or transfer of said license, shall be and remain under suspension until 2 a.m. Monday, September 25, 1961.

WILLIAM HOWE DAVIS.  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE - FEMALE IMPERSONATORS - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR 55 DAYS.

In the Matter of Disciplinary  
Proceedings against

EFCHARIS CARELIS  
T/A HOLLYWOOD CAFE  
49-53 W. BROADWAY  
Paterson 1, N.J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-268, issued by the Board of  
Alcoholic Beverage Control for the City  
of Paterson

Segreto & Segreto, Esqs., by James V. Segreto, Esq.,  
Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

- '1. On August 13, 18, 19 and 21, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered thereon persons who appeared to be homosexuals, viz., females impersonating males, and you allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.
- '2. On August 21, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated, and you allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"Four of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth the full names of the agents will not

be used but, instead, just the initials 'G', 'M', 'S' and 'R'. Two agents, 'M' and 'R' testified that they visited the defendant's licensed premises on all of the dates mentioned in the charges and 'G' and 'S' testified that their only visit was on August 21, 1960.

"The testimony of the agents as to their visit on August 21st with especial reference to Charge 1 is in substantial agreement and may be summarized as follows: that of the fifty patrons (16 or 18 of whom were females) in defendant's licensed premises at one time during the morning in question, at least 8 to 11 were attired in male-type shirts with the top button unbuttoned or some had sweatshirts, many wore tight fitting trousers, one of whom wore dungarees, some of the trousers worn had zipper-fly fronts, 'thick' belts with large buckles, oxford type loafers and tennis shoes. These females according to the testimony of the agents wore no make-up, had short cropped haircuts combed straight back, held cigarettes in the side of their mouths and flicked the ashes therefrom like males. They would gulp a shot of whiskey in one drink, walked with a heavy gait and on one occasion when two of the described females came from the ladies' room they were heard to use filthy language.

"The testimony of Agent M was that on his previous visits to defendant's premises on August 13 and 18, 1960 he observed females dressed similar to those described by the agents on the August 21st visit. On the first visit there were 45 patrons present of which 20 were females and 6 of whom attracted his attention. On the August 18th visit there were 25 patrons present consisting of 12 females 7 of whom attracted his attention for the reasons aforementioned.

"On the visit of August 21st Agent G testified that he observed a male patron stagger from the direction of the rest rooms, bump into a stool and then bump against him and in a slurred manner of speaking the man offered to buy him a drink; that a man (referred to as a 'bouncer' by the defendant) employed on the licensed premises told the man that he had had enough to drink and instructed the bartender not to serve any more drinks to him; that thereafter the bartender opened two bottles of beer which he served to the man; that the latter took one of these bottles and, as he walked away Agent G followed him; that he (Agent G) noticed the man walked in a zig-zag manner and 'bumped' into people who were seated at the bar; that the man proceeded to the section of the bar where the defendant was seated, placed the bottle of beer on the bar and gestured in front of the defendant to indicate a desire to dance with her; that as the other agents entered, he (Agent G) seized the bottle of beer purchased by the man and the agents then identified themselves to the defendant; that he (Agent G) informed her of the sale of beer to the man who appeared to him to be intoxicated and she said 'I told my bouncer to kick him out'; that defendant was asked to go with the agents to the back room where upon request of Agent M the man walked a line 'with a little difficulty'; that a male representing himself as the husband of the defendant requested that he (Agent G) explain what the alleged violations were and when he stated them to be a sale of alcoholic beverages to an apparently intoxicated person and that the place was a 'hangout' for apparent lesbians; the defendant overheard and shouted 'How can you say that they're lesbians and how can you say that I'm a lesbian?'

"Agents M, R and S testified that they had seen the man in question in defendant's licensed premises and as a result of their observations they were of the opinion that he was apparently intoxicated.

"The attorney for the defendant conducted extensive cross examination of the agents without any material variations in the

pertinent testimony brought out on direct examination.

"Defendant testified that the females (referred to by her as 'those kids') whom the agents described, although not her regular customers, have been coming into her establishment since another licensed premises in the neighborhood closed. She further testified that at no time have they deported themselves in any manner which could be characterized as immoral.

"Defendant's attorney submitted a well prepared and comprehensive memorandum wherein, among other things, he insists that in so far as Charge 1 is concerned testimony presented by the agents failed to support a possible finding that defendant's establishment was conducted in such a manner as to constitute a nuisance. A number of cases cited and quoted did not involve the type of patronage alleged in the first charge.

"Perhaps the principles set forth by the Director which constitute a nuisance within the meaning of Rule 5 of State Regulation No. 20 as laid down in Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2 might well be repeated:

'Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of female impersonators or homosexuals in large numbers on licensed premises be staunchly prohibited. The situation disclosed by the record in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge. To permit such persons to gather and congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected.'

"Defendant's attorney concerning the three visits calculated the percentage of the females in question when compared with the number of persons of both sexes to be small. However, when the ratio of those persons described by the agents to the total number of females present on each occasion is examined, the percentages are substantially increased.

"After a careful examination of the record herein, I am satisfied that the Division has proven the violations alleged in both charges by a fair preponderance of the evidence. Hence, I recommend that the defendant be adjudged guilty thereon.

"Defendant has no prior adjudicated record. However, a letter dated August 18, 1959 was sent to defendant wherein she was cautioned not to permit lesbians to congregate on her licensed premises. In answer thereto defendant on August 21, 1959 wrote: 'I have always watched carefully in the matter of female impersonators, and whenever I find such a person, she is immediately put out of my establishment.' The evidence adduced herein with reference thereto discloses defendant's failure to fulfill her promise.

"I recommend that an order be entered suspending defendant's license on Charge 1 for sixty days (Rutgers Cocktail Bar, A Corp. supra) and on Charge 2 for fifteen days (Re Mello-D-Club, Bulletin 1380, Item 6), making a total suspension of defendant's

license for a period of seventy-five days."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for defendant pursuant to Rule 6 of State Regulation No. 16.

Defendant's attorney contends that, with reference to Charge 1, the evidence presented indicates that on the dates in question only a relatively small number of apparent homosexuals congregated on the defendant's licensed premises and thus the Hearer's findings that the defendant conducted her business in such manner as to constitute a nuisance has not been established. Although it is true that the number of homosexuals present in the instant case was smaller than the number present in the case cited by the Hearer, I, nevertheless, find defendant guilty on said charge. I have examined the evidence concerning Charge 2 and find the defendant guilty thereof. However, in view of the lesser number of homosexuals on the premises as aforementioned and since no immoral activities took place at any times other than the obscene conversation of the two females as related by the agents, I shall modify the suspension recommended by the Hearer. On Charge 1, I shall suspend defendant's license for forty days (Re Rubinroit, Bulletin 1356, Item 2) and on Charge 2 for an additional fifteen days (Re Mello-D-Club, supra.), making a total suspension of fifty-five days.

Accordingly, it is, on this 25th day of April, 1961,

ORDERED that Plenary Retail Consumption License C-268, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Efcharis Carelis, t/a Hollywood Cafe, for premises 49-53 W. Broadway, Paterson, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m., Tuesday, May 2, 1961, and terminating at 3:00 a.m., Monday, June 26, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

August 3, 1961

BULLETIN 1395

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ITEM

1. COURT DECISIONS - NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION v. MUNICIPAL COUNCIL OF THE TOWNSHIP OF EDISON, DIVISION OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF NEW JERSEY AND R. H. MACY & CO. INC., T/A BAMBERGER'S NEW JERSEY - DIRECTOR REVERSED.
2. COURT DECISIONS - CALDWELL'S LIQUOR STORE v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.
3. COURT DECISIONS - MURPHY'S TAVERN INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.
4. DISCIPLINARY PROCEEDINGS (Highlands) - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE ON ELECTION DAY - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Avalon) - DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.
7. STATE LICENSES - NEW APPLICATION FILED

New Jersey State Library

3. COURT DECISIONS - MURPHY'S TAVERN INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL -- DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-244-60

MURPHY'S TAVERN, INC.,

Appellant,

vs.

WILLIAM HOWE DAVIS, Director  
of the Division of Alcoholic  
Beverage Control,

Respondent.

Argued June 6, 1961 -- Decided June 26, 1961.

Before Judges Conford, Freund and Kilkenny

Mr. George R. Sommer argued the cause for  
appellant (Mr. Morris Barr, of counsel).

Mr. Samuel B. Helfand, Deputy Attorney General,  
argued the cause for respondent (Mr. David D.  
Furman, Attorney General, attorney; Mr. Helfand,  
of counsel).

The opinion of the court was delivered by

FREUND, J.A.D.

Murphy's Tavern, Inc. appeals from an order of the Director of the Division of Alcoholic Beverage Control suspending its retail consumption license for a period of 60 days on the grounds of violation of Rule 5 of State Regulation No. 20, providing that:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

Appellant, whose establishment is located on Mulberry Street in Newark, was charged in two separate proceedings. The first charge alleged that on October 24, 30 and November 8, 1959, the defendant permitted its licensed premises to become a nuisance in that it "allowed, permitted and suffered thereon persons, males impersonating females, who appeared to be homosexuals," and "allowed, permitted and suffered such persons to frequent and congregate in and upon" the licensed premises, and otherwise conducted the licensed place of business "in a manner offensive to common decency and public morals." The second set of charges was directed towards activities on May 6, 13 and 14, 1960, and asserted that defendant had permitted male persons on the licensed premises "to engage and participate in foul, filthy and obscene conduct and to solicit and make overtures for and arrangements with other male persons \* \* \* for acts of perverted sexual relations;" the substance of the initial charge was also repeated in order to cover the dates in May, 1960.

The hearing officer concluded that the Division had established appellant's guilt as to all charges by a fair preponderance of the evidence. The Director concurred in and adopted the findings and conclusions of the hearer. This appeal is predicated solely on the contention that the proofs adduced in the two proceedings do not justify the inference of violation of the Regulation as set forth in the charges. It is claimed that all that was demonstrated by the testimony was that persons with effeminate characteristics may have frequented the premises, and that this in itself does not constitute grounds for license suspension.

The initial hearing covered charges directed to activity upon the licensed premises in October and November of 1959. Investigator R., an agent for the New Jersey Division of Alcoholic Beverage Control, testified that he visited Murphy's Tavern on all three of the dates mentioned in the charge. He described the premises as consisting of one small barroom, about 20 x 25 feet in size. On his October 24 visit, he noted about 40 patrons in the place, seated at the bar and milling around. Approximately 20 of the customers attracted his attention because of "their feminine actions and mannerisms, the manner in which they conducted themselves." More specifically, "\* \* \* they would speak to the male seated with them, they would roll their eyes at each other and simulate a kiss now and then, like you would peck a kiss at a person, and occasionally they would put their arm around each other and feel different parts of the body \* \* \*." He added, "We could definitely smell the odor or perfume on the premises."

On his second visit, on October 30, agent R. again singled out about 15 to 20 of the 40 to 45 males on the premises as displaying marked feminine characteristics. On one occasion he observed one male to say to another, "I thought you were going home with me tonight," and they would grab each other's private parts and simulate kissing each other." Agent R. also witnessed an argument between two male patrons in which obscenities were freely exchanged; he testified that the bartender did not move to halt the dispute. On November 8, the same agent again visited the premises, which were filled to capacity with about 75 to 80 males and one couple. He observed about 20 to 25 of the males "grabbing each other as they would pass going to the men's room \* \* \* they would grab each other's buttocks or each other's private parts \* \* \* they acted as though they were like a man and wife would act. They helped each other drinking and put their arms around one another, and we observed two directly opposite us that had eyebrow pencil on." Later that evening, agent R. had a conversation with bartender Joseph Yeachshino; the investigator, still unrevealed, said, "The kids must have really been dressed up for Halloween," and Yeachshino replied, "if you were new in town and came in here for the first time that night, you would have had a ball with all the [obscenity] in here."

At about 1:50 a.m., as bartender Carmine Lubertazzi began to extinguish the lights in the tavern and as "three of these apparent homosexuals passed him [on their way out] they grabbed him by his private parts, at which time he pulled away \* \* \* laughing and joking with them \* \* \* on one occasion one of the apparent homosexuals kissed Mr. Lubertazzi on the cheek as he left." Several minutes later, agent R. and agent S., who was with him, identified themselves to the bartenders. Lubertazzi was asked whether it was normal for patrons to grab him by his private parts as they left the premises, and he allegedly replied, "That's nothing \* \* \* you could see that in any straight bar too." Agent S. asked Lubertazzi if he would kiss him, the agent, also, and the bartender replied, "Sure, if you were my cousin."

Direct examination of agent S. was waived upon the stipulation that he had accompanied agent R. on the three dates mentioned and that his testimony would be entirely corroborative. On cross-examination, he was asked what made him think any of the patrons were

homosexuals; he replied, "When you see a man put his arm around another man and rest his head on his shoulder, and another man while he's doing that is rotating his hand on a man's buttocks or grabbing each other by the private parts or kissing each other on the lips or cheeks, is to me apparent homosexuals."

The testimony on behalf of appellant at this initial hearing included that of William R. Peters, a patron of the tavern, who testified that while some of the customers "have fairly high voices," none of them ever annoyed or bothered him and he did not perceive any homosexuals; Lubertazzi, who admitted that persons with feminine characteristics frequented the tavern, said that there were no patrons whom he considered homosexuals, denied that a patron had kissed him on the cheek upon leaving ("\* \* \* I remember this fellow leaning over and saying to me good night, I had a nice time \* \* \* it sort of probably could have looked like a kiss on the cheek, but it wasn't"), and disputed the substance of the alleged conversations with the agents; part-time bartender Theodore Hirsch, who testified that he worked on November 7 and 8, that there were no homosexuals present, and that he did not see anything obscene or improper but that if he saw one male put his hand around another male at the bar he "would tell them to cut it out;" Yeachshino, who conceded that some of the patrons had feminine characteristics but denied that any of them, to his knowledge, were homosexuals, explained possible touching of each other by the patrons on November 8 in terms of the crowded conditions in the tavern ("there was no other way you could have gotten around unless you touched somebody one way or another"), disputed the substance of the "Halloween" verbal exchange with agent R., and maintained that he did not know what the expression, "fag or fairy," meant; Jack Trachtenberg, one of the owners and the manager of the tavern, who stated that there were customers with effeminate characteristics who usually congregated by themselves but that they never bothered other patrons, that the Newark police had the establishment under surveillance for several months in the summer of 1959 but failed to point out to him any people they considered undesirable, and that he did not take any steps to determine whether the effeminate patrons were in fact homosexuals because "the only way \* \* \* is to be approached by one or to actually see them do something," which did not occur in his experience and observation; and Al Thoma, an athletic director at the Newark Athletic Club, who testified that, in his opinion, it is not possible to tell from a person's mannerisms whether he is a homosexual.

At the second hearing, relating to charges focused on May 6, 13 and 14, 1960, three of the respondent's investigators and an administrative inspector testified as to their observations, which were quite similar to those of agents R. and S. on the prior occasions.

Agent D. noted that after he had sat down at the bar on May 6, a male patron named Jimmy (later identified as James Geddings, Jr.) brushed by him, said, "Excuse me," introduced himself and started a conversation. According to the investigator, "through the course of the conversation he was rubbing his left leg against my right leg, and from time to time he placed his hand on my leg. When I was about to leave, he grabbed me in my privates and asked if I was going to return." When agent D. did return to the premises, on May 13, he again encountered Geddings, who once more rubbed the agent's leg and grabbed his privates while attempting to convince him to engage in a sex orgy. The agent was at that time introduced to another male patron named Fred, who openly admired his physique, and, when rebuffed once on a "proposition" to the agent, said, "That is too bad because I could do a lot with that body of yours." Agent D. testified that he mentioned to one of the bartenders, Bruce Adams, that he and Geddings were going to have a sex orgy and asked if Bruce would like to come along; Adams purportedly answered, "No, only with you," and rolled his eyes. Agent D. left

the tavern at midnight with Geddings, and they were met outside by the other agents, who identified themselves and brought Geddings into the back room of the tavern for questioning.

The testimony of agent S. was largely repetitive of that of agent D. He observed many of the male patrons calling each other such names as "Honey," "Doll," "Mary," and "Mother." At one point, as he moved down a crowded aisle to the men's room, agent S. accidentally brushed against one of the male patrons, who looked up at him and said, "Oo, no wonder I always sit here. I get to feel all these warm bodies." He also overheard a conversation in which one male said to the other, "Well, I don't go out with him any more. We are incompatible \* \* \* It is better this way. Besides, Artie is so much younger." Agent S. also observed, on May 13, "two males standing very close to each other, facing each other, place their arms about each other in embrace, and moving the lower parts of their bodies in circular motion in time to the music on the juke box."

Agent N. testified that he observed agent D. with Geddings, and he confirmed Geddings' physical advances. He recalled that a patron seated next to him had mentioned, nodding in the direction of agent D., "I wish I could get an introduction to him. He has such a body. There should be a law against that." Administrative inspector D. confirmed the general observations of the other agents.

Appellant produced Jack Schultz, manager of the tavern on the nights in question, Lubertazzi, and Geddings. Schultz and Lubertazzi merely denied that homosexuals congregated in the tavern, to their knowledge, and insisted that they could not evict a patron from the premises simply because of the way he dressed or the manner in which he spoke. Geddings recalled sitting and talking with agent D. but denied that the subject of homosexual relations ever came up or that he had touched the agent's private parts. He emphatically proclaimed that he was not a homosexual. He admitted that he and agent D. had left the tavern about the same time on the evening of May 13, but he asserted that they were not together and that he was just going on to another bar for a drink.

Our review of the proceedings before the Division is to determine whether there is substantial competent primary evidence to support the inferences of violation drawn by the administrative tribunal. In re Larsen, 17 N.J. Super. 564, 573 (App. Div. 1952); Benedetti v. Bd. of Com'rs. of Trenton, 35 N.J. Super. 30, 34 (App. Div. 1955); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504 (App. Div. 1956). Therefore, to the extent that appellant asks us to reject the testimony of the respondent's agents in the light of the absolute denials of its own witnesses, we must, having found the agents' testimony reasonably credible, reject its contention. As stated in Freud v. Davis, 64 N.J. Super. 242, 246-47 (App. Div. 1960),

"The choice of accepting or rejecting the testimony of witnesses rests with the administrative agency, and where such choice is reasonably made, it is conclusive on appeal. We canvass the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it."

It is further urged that there was no direct proof of the homosexual nature of those patronizing appellant's premises. and, alternatively, that even if there was sufficient proof, the mere presence of persons with abnormal physical or emotional tendencies

does not, without more, require their exclusion from the premises.

In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405 (App. Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Secondly, aside from the question of actual homosexuality, the proofs herein are, considering our reviewing function, highly persuasive as to the overt acts of lewdness practiced upon the premises. The testimony of the agents with respect to the physical touching of private parts, the simulated kissing, and the suggestiveness of many of the conversations cannot be overlooked in this regard. And the recital of agent D. with respect to his encounter with Geddings, though denied by the latter, could reasonably be believed by the hearing officer and the Director. Agent D.'s direct testimony that he was "propositioned," along with the reports of other conversations overheard by the investigators, provides ample support for the finding of guilt on the charge of soliciting.

It should not be thought that the court is callous to the problem of the homosexual, medically or socially. The public interest in tight control over the liquor business, In re Olympic, Inc., 49 N.J. Super. 299, 306 (App. Div.), certif. denied 27 N.J. 279 (1958), involves, however, neither the curative approach of the physician nor the analytical view of the sociologist. The primary concern in this regard is maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded.

Affirmed.

- - - - -

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street, Newark, N. J.

BULLETIN 456

MAY 1, 1941.

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4. APPELLATE DECISIONS - QUARELLO v. RARITAN, JANSEN AND TURNER.

DECISION HERETOFORE RESERVED NOW RENDERED AND ISSUANCE OF LICENSE BY MUNICIPALITY REVERSED FOR FAILURE OF DISQUALIFIED PARTNER TO DISPOSE OF HIS INTEREST.

5. APPELLATE DECISIONS - JACKEL v. PLAINSBORO.

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6. APPELLATE DECISIONS - DERRICO v. MONTCLAIR.

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7. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

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10. APPELLATE DECISIONS - PAWELEK v. SAYREVILLE.

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11. APPELLATE DECISIONS - MARINO v. MOUNT LAUREL.

PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN, DESPITE VACANCY UNDER MUNICIPAL REGULATION LIMITING THE NUMBER OF LICENSES - DENIAL AFFIRMED.

3. APPELLATE DECISIONS - McCRACKEN v. CALDWELL.

LICENSE REVOKED FOR ALLOWING THE PREMISES TO BE CONDUCTED AS A NUISANCE AND PERMITTING THEREON FEMALE IMPERSONATORS AND OTHER PERSONS OF ILL-REPUTE - KNOWLEDGE OF THE LICENSEE AND IMPROPER CONDUCT OF THE PREMISES APPARENT - REVOCATION AFFIRMED.

VERNA B. McCRACKEN, trading as )	
KIT-KAT TAVERN, )	
Appellant, )	ON APPEAL
-vs- )	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE )	
TOWNSHIP OF CALDWELL, )	
Respondent )	
-----	

David Young, 3rd, Esq., Attorney for Appellant.

Robert Shaw, Esq., Attorney for Respondent.

After a hearing held upon charges alleging that appellant permitted her licensed premises to be conducted in such a manner as to become a nuisance and that she permitted female impersonators or other persons of ill-repute upon her premises, respondent revoked her plenary retail consumption license for premises located on Bloomfield Avenue, Caldwell Township, Essex County, New Jersey. Appellant appeals from the order of revocation.

On November 9, 1940, Investigators Carlin and Thievon of this Department entered the licensed premises about 10:00 P.M. and remained there until about 2:00 o'clock the following morning. They testified that shortly after their arrival they became acquainted with a male named Anderson, who acted in a very effeminate manner; that Anderson addressed other effeminate male patrons as "Pretty Mickey," "Miss Cavanaugh," and "Miss Hickey," and was addressed by them as "Miss Anderson"; that of fifty male patrons, all except about six were this type; that the male patrons danced together, embraced, kissed and otherwise acted in an indecent manner. Without detailing all the evidence, I am satisfied from the record that these persons, as well as one of the bartenders called "Paul" and another patron called "Hughie," were moral degenerates, "fairies," or, more politely, female impersonators. Re Orsi, Bulletin 326, Item 1.



The investigators returned on November 16, 1940 and remained there from about 10:00 P.M. until about 3:00 A.M. On this evening, sixty or seventy males were present and no female patrons. "Miss Anderson," "Pretty Hickey," and "Miss Hickey" were present and the conduct of the patrons was almost an exact duplication of their actions on the previous evening.

On behalf of appellant, a number of normal persons testified that appellant conducts her premises in a proper manner. Some of these witnesses were not present on the evenings in question. As to those who claimed to be present: One woman testified that on November 16th between 11:00 P.M. and midnight she saw no improper conduct, although she admits that she didn't "Pay particular notice"; two men testified that they were present on both evenings and saw nothing improper, although both admitted that they saw a few male patrons on the "effeminate side of life," and one admitted that he had heard a male patron addressed as "Miss Cavanaugh." In view of the detailed testimony given by the investigators, who were present for the purpose of observing conditions, I conclude that if these witnesses are telling the truth they failed to pay any particular attention to the actions of these undesirables.

The sole meritorious question seems to be whether appellant had any knowledge of the character of these undesirables so that she may be said to have permitted them upon her premises. At the hearing of the appeal she denied any knowledge of their character, said that she was busy in the check room so that she was unable to observe their conduct, and contends that she does not know the meaning of the term "female impersonator."

However, the investigators testified that when they entered the licensed premises on November 16th, the licensee said to them: "You fellows gave us a scare - one of the boys told me the police were outside," and later the same evening, after the investigators had called her attention to the fact that these male patrons were using the small toilet under suspicious circumstances, she said, "I know what the bastards are doing; they used to use my toilet upstairs until I chased them out." On November 19th, when the investigators again visited the licensed premises, she told them that the bartender Paul and three of the male patrons were "fags." Despite her denials at the hearing, I am satisfied from the record that she knew the character of these undesirables and permitted them upon her premises. The finding of guilt on the charges by the Township Committee is affirmed.

Appellant argues that the penalty is excessive. I do not think so. There is no excuse for permitting this sort of conduct on licensed premises. The question of the penalty to be imposed is primarily to be decided by the local issuing authority in a case of this kind, and, under the facts of the case, I am satisfied that the penalty was not unreasonable or excessive.

The action of the Township Committee in revoking the license is, therefore, affirmed.

Accordingly, it is, on this 18th day of April, 1941,

ORDERED, that the present appeal be and hereby is dismissed; and it is further

ORDERED, that the order of revocation of appellant's plenary retail consumption license, heretofore entered by respondent and held in abeyance pending disposition of the instant appeal, is hereby restored, to take effect on April 21, 1941, at 3:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

4. APPELLATE DECISIONS - QUARELLO v. RARITAN, JANSEN AND TURNER.

DECISION HERETOFORE RESERVED NOW RENDERED AND ISSUANCE OF LICENSE BY MUNICIPALITY REVERSED FOR FAILURE OF DISQUALIFIED PARTNER TO DISPOSE OF HIS INTEREST.

AURELLO L. QUARELLO,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	ORDER
BOARD OF COMMISSIONERS OF THE	)	
TOWNSHIP OF RARITAN, MIDDLESEX	)	
COUNTY, and JOSEPH JANSEN and	)	
EDWARD TURNER, t/a "The Hideaway,"	)	
Respondents.	)	
- - - - -	)	

Biunno & Rothberg, Esqs., by Ferdinand J. Biunno, Esq.,  
Attorneys for Appellant.  
Thomas L. Hansen, Esq., Attorney for Respondent Board.  
Roger M. Yancey, Esq., Attorney for Joseph Jansen and  
Edward Turner.

On April 10, 1941, conclusions were entered herein (Bulletin 454, Item 4), granting leave to present to me proof, within ten days from the date of the conclusions, that Edward Turner had completely severed his connection with the licensed premises and that Joseph Jansen is now the sole owner of the business, and providing further that unless such proof was presented within said time a final order would be entered herein reversing the action of respondent Board of Commissioners in granting the license to Joseph Jansen and Edward Turner;

And it appearing that the ten days have expired and that no proof has been presented to me in accordance with the terms of the conclusions,

It is, on this 22nd day of April, 1941,

ORDERED, that the action of the Board of Commissioners of the Township of Raritan, Middlesex County, in granting a plenary retail consumption license to respondents, Joseph Jansen and Edward Turner, for premises on the north side of Inman Avenue, Piscataway-town, Township of Raritan, be and the same is hereby reversed, effective immediately; and it is further

ORDERED, that all operations under said license cease forthwith.

E. W. GARRETT,  
Acting Commissioner.

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 571

June 4, 1943.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, N. J.

BULLETIN 571

JUNE 4, 1943.

1. DISCIPLINARY PROCEEDINGS - PERMITTING HOSTESSES TO ACCEPT BEVER-  
AGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE  
REGULATIONS NO. 20 AND LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVER-  
AGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION  
OF RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING FEMALE IM-  
PERSONATOR UPON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF  
STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary )  
Proceedings against )

SIDNEY LITCHENSTEIN, )  
317 Market Street, )  
Paterson, N. J., )

CONCLUSIONS

AND

Holder of Plenary Retail Con- )  
sumption License C-355, issued )  
by the Board of Alcoholic )  
Beverage Control of the City )  
of Paterson. )  
- - - - - )

ORDER

David Newman, Esq., Attorney for Defendant-Licensee.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads not guilty to the following  
charges with the exception of charge (2) to which he pleads guilty:

"1. On the night of October 14, 1942, and the early  
morning of October 15, 1942, you allowed, permitted  
and suffered females employed on the licensed premises  
to accept beverages at the expense of and as a gift  
from customers or patrons, in violation of Rule 22  
of State Regulations No. 20.

"2. During the time aforesaid, you served beverages  
to and permitted hostesses, female entertainers and  
other female employees to sit at tables and stand at  
the bar with persons, patrons and customers visiting  
the licensed premises, in violation of Rule 6 of Rules  
and Regulations concerning alcoholic beverages adopted  
June 28, 1935, by the Board of Aldermen of the City of  
Paterson.

"3. During the time aforesaid, you sold, served and  
delivered and allowed, permitted and suffered the  
service and delivery of alcoholic beverages to persons  
actually and apparently intoxicated, and allowed,  
permitted and suffered consumption of alcoholic bever-  
ages by such persons upon the licensed premises, in  
violation of Rule 1 of State Regulations No. 20.

"4. On March 20, 1943, and on divers days prior  
thereto, you allowed, permitted and suffered, in and  
upon your licensed premises, a known female impersona-  
tor, in violation of Rule 4 of State Regulations No.  
20."

On the evening of October 14, 1942, two investigators from this Department visited the premises of defendant-licensee. Their testimony discloses that two entertainers, employed by the defendant, were drinking with and at the expense of various men patrons. This was not denied by the one entertainer who by way of explanation testified that instead of accepting drinks directly from the customer, she permitted him to give her money with which she then purchased her own drinks. The other entertainer admitted accepting drinks at the expense of a customer. Each time a drink was ordered by and served to this entertainer, the defendant would take the cost of the drink from the balance of the money remaining on the bar which belonged to the man who did the treating. Regardless of the method used by which payment for the drink was made to the defendant by the customer, it violated Rule 22 of Regulations No. 20 relative to employees accepting beverages at the expense of or as a gift from customers or patrons. I, therefore, find the defendant-licensee guilty of charge (1).

The investigators testified further that when they entered the tavern their attention was drawn to a man who appeared to be asleep at the bar. This man, later identified as Eddie, had his arms and head resting on the bar. Suddenly he moved his arms and overturned a glass of whiskey that was standing on the bar immediately in front of him. His companion, the investigator continued, ordered another round of drinks which were served to them by the defendant. Thereafter, the investigators stated, the defendant had one of the entertainers telephone for a taxi cab and upon its arrival "Eddie" was helped to the street by the cab driver. Eddie's companion thereupon staggered from the premises. Both investigators testified that the two men were intoxicated at the time alcoholic beverages were served to them.

The defendant admitted the presence of the two men in the tavern on the night in question. He stated that "Eddie had his first drink and then his head was on the bar". Under cross-examination the defendant admitted serving two drinks subsequent to the time he noticed that Eddie had his head on the bar. He insisted, however, that he placed the two drinks in front of Eddie's companion. I am satisfied from the testimony that both Eddie and his companion were intoxicated at the time service of alcoholic beverages was made to them.

The testimony discloses that several departmental investigators who had not testified previously visited the tavern of defendant on March 20, 1943 and divers days prior thereto. They stated that they noticed on these occasions a young man on the licensed premises who endeavored to impersonate a woman. This youth, the investigators testified, had his eyebrows heavily mascaraed, rouge or lipstick on his lips and definitely effeminate in manner and talk. The investigators said on several occasions the young man attempted to entertain the customers with songs through a microphone installed on the premises. He also showed a telegram from New Orleans to one of the investigators wherein an offer of employment as a female impersonator was made. His appearance, especially with reference to make-up, was corroborated by two municipal detectives who were summoned to the premises of defendant on March 20, 1943. One of these detectives testified that he had seen the youth on the street on several occasions at which times he was "made up".

Defendant testified that he had known the young man for a number of years, becoming acquainted with him when he was a "shoe-shine boy". He further stated that he did not pay particular attention to the boy's appearance other than to observe that the youth

had his eyes "made up". He further testified that the young man was a local boy and knew almost every person that frequented his tavern.

I have no doubt that the young man was a "female impersonator" within the meaning of that term as used in the Regulations. I find defendant guilty as to charge (4).

I note that, in addition to the instant violations, the defendant has a previous record. In December 1940, defendant's license was suspended for five days for possession of a device in the nature of a slot machine and again, in November 1941, he pleaded guilty to violation of the municipal ordinance regarding closing hours and keeping interior of licensed premises open to public view. His license was suspended for four days because of these latter violations. The present violations indicate that the defendant is progressively becoming more careless in the conduct of his business. Under the circumstances, I have no alternative but to revoke defendant's license.

Accordingly, it is, on this 1st day of June, 1943,

ORDERED that Plenary Retail Consumption License C-355, heretofore issued by the Board of Alcoholic Beverage Control of the City of Paterson to Sidney Litchenstein for premises 317 Market Street, Paterson, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - PERMITTING FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

GERTRUDE GREYER )  
t/a CLUB 115 )  
115 Hudson Street )  
Hoboken, N. J. )

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consump- )  
tion License C-60, issued by the )  
Board of Commissioners of the City )  
of Hoboken. )  
----- )

Gottlieb & Gottlieb, Esqs., Attorneys for Defendant-Licensee.  
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges: (1) that she falsely answered Question 26 in her application for her current license, in violation of R. S. 33:1-25 and (2) that she allowed, permitted and suffered a female employee on the licensed premises to accept drinks of beverages at the expense of customers, in violation of Rule 22 of State Regulations No. 20.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

September 11, 1961

BULLETIN 1406

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New Jersey State Library

2. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (HOMOSEXUALS) - CHARGE ALLEGING POSSESSION OF INDECENT MATTER DISMISSED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

Margaret Simmons )  
t/a Pine Brook Diner and Marge's )  
Keyhole Cocktail Lounge )  
Route #46 )  
Montville Township, PO Pine Brook, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-7 (for the 1960-61 and 1961-62 licensing years), issued by the Township Committee of the Township of Montville. )

-----  
James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

- '1. On November 27, 30, December 1 and 3, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., females impersonating males and males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.
- '2. On December 3, 1960 and prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., photographic illustrations of male and female persons depicted in obscene, indecent, filthy, lewd, lascivious and disgusting poses, positions, practices and acts; in violation of Rule 17 of State Regulation No. 20.'

"To substantiate the charges, the Division called as its witnesses the ABC agents who participated in the investigation of defendant's licensed premises. They will be referred to herein as Agents, R, S, G, B, St, Sp, V and N.

"Succinctly stated, the testimony of Agent R shows that he,



Agent S, St, Sp, G and B arrived in the vicinity of defendant's licensed premises at about 3:55 p.m., Sunday, November 27, 1960 and that Agents G and B entered the cocktail lounge shortly thereafter; that at 5:25 p.m. he, Agents S, St and Sp entered and took seats at the bar behind which was Margaret Simmons, the licensee herein; that he observed two females at the bar and one couple at a table; that one of the females who was seated at the bar got up to go to the cigarette machine and 'I observed her attire and her gait was masculine; she walked with a heavy step; she wore a short zipper jacket over a flannel shirt with slacks and loafers on; she had a short crop haircut, no make-up, no facial make-up, no jewelry. The female she was seated with was dressed in a similar manner, but her actions were not masculine as the one I had just described'; that Agents G and B left the premises at 5:45 p.m. at which time he said to Mrs. Simmons: 'Where is all the kids?' and she replied 'Oh, they will be in later. They usually come in between 7 and 7:30', after which he and the remaining agents departed.

"Agent R further testified that at 7 p.m. he, Agents S, Sp and St returned to the licensed premises wherein Carol Darkins was tending bar and two females, using stage names of Elvis and Ronnie, were entertaining on an elevated stage behind the bar; that both entertainers 'were attired exactly the same with the exception of Ronnie who, on this occasion, wore a slipover sweater, a sleeveless sweater over her male-type shirt'; that Elvis 'played the guitar and sang on a couple of occasions and Ronnie played the drums' and sang 'in a deep voice'; that the patronage 'increased to about fourteen females and a couple of male patrons'; that 'ten or twelve of them (females) were all dressed in a similar manner; they wore no -- some wore no facial make-up and other in this group had slight traces of it; that they all wore either male type trousers or female slacks with loafers, sweaters and male type shirts; some acted more masculine and aggressive than the others and the ones who did have some traces of lipstick on and weren't too masculine in their movements remained more passive'; that 'I didn't overhear any of their conversations, but they seemed to be quite friendly and sat very close together and conversing in a low tone of voice'; that 'a couple entered, one girl with long feminine hair, and she wore regular female attire. She was accompanied by a female in a three-quarter coat, male type shirt, slacks, loafers, short crop haircut, no facial make-up. Her actions were masculine. They approached the bar together and the more masculine appearing of the two said to Mrs. Darkins, she says, "Could my girl friend have a drink? She is only nineteen"', and that both girls departed the premises without having been served; that when he and the other agents were about to depart 'two males entered the premises dressed in short jackets and they walked with somewhat of a bounce, bouncing up and down on their toes -- they had that feminine characteristic about them when they moved' and that Carol stated that Elvis was her cousin from New York.

"Agent R further testified that on Wednesday evening, November 30, 1960 he and Agent S returned to the defendant's premises wherein Mrs. Simmons was tending bar; that at the bar 'there was one couple, one lone female and one male seated alone'; that the female 'was dressed in a similar manner as I described the other females'; that Agents G, B and Sp entered the premises about 9:45 p.m. and Agent St came in at about 10 p.m. and 'we joined in one group at the bar'; that the lone female at the bar was 'an apparent lesbian'; that he and the other agents left the premises at 10:50 p.m. and that he and Agent S returned thereto at about 11:10 p.m.; that 'a group of females came in -- I believe there were five. In this group was Carol Darkins, Elvis, Ronnie and they were accompanied by two other females. They were all in one group, entered together and they were all dressed in a similar manner. They all wore either short zip-up jackets or three-quarter coats, slacks, loafers,

male-type shirts, the collar turned up. Two wore turtleneck sweaters and two of the pants were khaki, like you would buy in the army'; that two of the females in the group 'appeared to be more masculine and they were more aggressive in their movements'; that there were two females at a table and although they were dressed in a similar manner, one of the two females remained passive and the other girl acted more masculine in her movements and more or less took the male role and that at about 11:30 p.m. he and the other agents left the premises.

"Agent R further testified that at 10:50 p.m. Saturday, December 3, 1960 he, Agents S, G and B arrived in the vicinity of defendant's premises and that he and Agent S entered and took seats at a table; that Walter Gunderman, Carol Darkins and Margaret Simmons were behind the bar and that Elvis and Ronnie were entertaining; that there were approximately thirty patrons at the bar and about fifty at tables 'and dancing on the dance floor'; that 'Ronnie wore a male type dress shirt with a kerchief around her neck, slacks, male type trousers and she had loafers on. She had a short crop haircut and I saw no signs of make-up from where we were ---. Elvis was dressed in a western type shirt with a kerchief around her neck, short crop haircut, dungarees and loafers'; that 'about fifty-five of the female patrons, although appearing to be feminine in their characteristics, their clothing gave an outward appearance of being lesbians' and that the male patrons appeared to be 'queers'; that at about 11:20 p.m. he and Agent S identified themselves to Margaret Simmons and he asked her 'Do you know what a lesbian is?' and that she replied: 'Yes, I do' and looking over the patrons he asked 'How long have they been coming here' and she said 'Oh, about a month or so. I thought it was all right for them to come in here as long as they behaved themselves'; that 'she said it was a shot in the arm when they came in, a shot in the arm for business'; that he showed the licensee three pictures which were found behind the bar and she said 'They were taken at a picnic for the - - Fund' and 'that there was nothing wrong with the pictures, that they were only props'.

"The testimony of the other agents tends to corroborate that of Agent R insofar as their participation in the investigation is concerned.

"Witnesses appearing for defendant were Paul Harris, Elvis, Carol Darkins, Walter Gunderman, Doris Ryerson and Margaret Simmons.

"Harris testified that he is employed by a High Fashion Department Store as a head window trimmer and 'works with' women's apparel every day; that he lives a block away from defendant's licensed premises, which he visits about twice or three times a week; that he and two friends were in the cocktail lounge on Saturday night, December 3, 1960; that he did not observe any person who appeared to be a sex deviate and that the females were dressed 'casual because Mrs. Simmons' place is the only place around there that is casual'.

"Elvis testified that she is an entertainer and has quite a few western costumes; that she plays rock-n-roll and western music on a guitar and sings; that she does not consider that she has a deep voice; that she is not a lesbian; that on the night of November 30th it was extremely cold when she, Ronnie, Pattie, Carol and her dog arrived at defendant's premises at 11 p.m.; that she wore corduroy slacks, a heavy sweater, a blouse under it and a three-quarter length woman's coat and that Ronnie wore slacks and a woman's coat; that she entertained on the night of December 3rd; that she has her hair barbered by a beautician; that the girls

who frequent defendant's establishment wear casual clothes and that when the agents identified themselves they asked her if she was a lesbian 'I told them I was not'.

"Carol Darkins testified that she is a machine operator in a pharmaceutical plant; that she worked part-time for defendant as a waitress and bartender; that Elvis and Ronnie wore western costumes and sang 'western rock-n-roll'; that the defendant's patrons range in age from twenty-one to thirty-five and that on the night of November 30, 1960 she, Elvis, Ronnie, Pattie and her dog arrived at defendant's establishment at about 11 p.m. after attending a drive-in movie; that she wore slacks and a woman's coat 'it was freezing out'; that she is not a lesbian; that none of the patrons impressed her as being lesbians and that she and Ronnie are first cousins.

"Gunderman testified that on the dates alleged in the charges he was tending bar in defendant's establishment; that the entertainment therein consisted of 'rock-n-roll and a little hill billy'; that the entertainers wore cowboy outfits; that he didn't observe any person who appeared to be a lesbian or homosexual; that Agent R asked him 'Where can I get a date around here?' and he told him that he didn't know; that Agent G asked if he knew there were a lot of lesbians in there and that he said he didn't know 'because I couldn't call them lesbians'.

"Doris Ryerson testified that she is a waitress; that she has known Mrs. Simmons for about ten years and that she visits her establishment four or five times a week; that she was present therein on the dates alleged in the charges; that most of the female patrons wore slacks and sweaters; that she couldn't say the girls were lesbians 'I don't know', and that she didn't see any men there who appeared effeminate.

"Margaret Simmons testified that for ten years she has operated the Pine Brook Diner and the cocktail lounge adjacent thereto; that there are several factories, bowling alley and an auction close by and a small shopping center across the street; that respecting the attire of her patrons 'Well, an awful lot of girls come in slacks, sweaters or heavy coats. After all it was wintertime. Even the patrons from the auction came in dressed that way. Even the girls that worked down at the auction are dressed that way. They have these winterized boots that has fleece lining in it. They wear slacks, heavy sweaters, or they wear these short jackets that are like fleece lined. And they frequent my place'; that at about 11 p.m. December 3rd Agent R walked over to the bar and said, 'Marge, can I see you', he pulled out his badge and said 'We are ABC agents'; then we went into the diner and two local policemen arrived; that the agents said 'You are running a place that has nothing but lesbians and queers', and that she said 'How can you say a thing like that? I haven't got a place like that'; that Agent R said 'Would you say you got at least fifty lesbians in there?' and that she replied: 'I can't say I have any one in there', and I asked him 'Can you?' 'We have working girls that come from Metal Frame and they are rough and tough. I can't say those girls are not women just by their actions and by the way they dress. They all come in - - in fact, those girls even come in in dungarees' and that she never knew any of her female patrons to be lesbians or her male patrons to be effeminate.

"Respecting the second charge, Mrs. Simmons testified that the pictures were taken at a picnic which the tavern owners sponsor to send boys through college. She testified further

that Ronnie was unable to appear as a witness because of a death in her immediate family.

"At the outset it is significant to note that the greater number of charges involving homosexuals heretofore preferred against licensees alleged that males impersonating females were permitted to congregate in large numbers in and upon licensed premises and that those charges were established to the satisfaction of the Director and the Appellate Division of the Superior Court by evidence indicating that such persons 'displayed by speech, tone of voice, bodily movements, gestures and other mannerisms, the common characteristics of homosexuals' and 'had the conspicuous guise, demeanor, carriage and appearance of such personalities'. See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405.

"In the instant case the charge alleges that the licensee permitted females impersonating males and males impersonating females to frequent and congregate in and upon her licensed premises.

"The evidence adduced by the Division to support that charge tends to show that there were some males on the licensed premises who appeared to be 'queers' and the testimony elicited to substantiate that generality is that 'two males entered premises dressed in short jackets and they walked with somewhat of a bounce, bouncing up and down on their toes --- they had that feminine characteristics about them when they moved'. In the main however, the evidence pertains to the female patrons, the barmaid and two female entertainers who were in the licensed premises on Saturday night, December 3, 1960. To establish that those females appeared to be lesbians the Division relies upon the observations of the agents who testified that the females wore no facial make-up, or jewelry, and more significantly that they were attired in mannish clothes.

"It is common knowledge that in recent years a large segment of the female population has adopted an attire which appears to be masculine and that such attire is worn in factories, for sports, at the beaches and places of amusement, while shopping and as casual street dress in both urban and suburban communities. While such garb may incur the displeasure of the more conservative stylists, it is evidently here to stay and to characterize as homosexuals those who wear such casual attire requires 'the courage of a lion'.

"I have had the opportunity to hear and observe two of the females whom the agents specifically identified as lesbians and their speech, mannerisms and deportment convinced me that they were normal females.

"Having carefully considered the testimony elicited herein, I can find no concrete evidence which substantiates the allegation set forth in Charge (1). There is but a modicum of proof that some of the patrons displayed the conspicuous mannerisms characteristic of homosexuals and there is no proof whatsoever that defendant's patrons or female employees indulged in licentious solicitations. I conclude, therefore, that the Division has failed to establish the truth of Charge (1) by the necessary preponderance of the evidence.

"With respect to Charge (2), I find that the three photographs received in evidence are vulgar representations; that one of them is indecent and that none of them should have been permitted on the licensed premises.

"In view of the aforesaid, I recommend that Charge (1) be dismissed and that defendant's license be suspended for fifteen days for the violations set forth in Charge (2). Re Mariner's Bar, Inc., Bulletin 1219, Item 7."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney appearing for the Division, pursuant to Rule 6 of State Regulation No. 16; and the attorney for the Division and the attorney for the defendant presented oral argument before me, at my request.

The exceptions filed by the attorney appearing for the Division are taken to the Hearer's recommended dismissal of Charge 1 and, at the oral argument, the attorney for the defendant took exception to the Hearer's recommended finding of guilt on Charge 2.

I shall sustain the exceptions filed by the attorney for the Division with respect to Charge 1 and, with respect to Charge 2, I shall sustain the exceptions of the defendant. With respect to Charge 2, I am accepting the explanation made on the licensee's behalf at the oral argument that the alleged indecent photographs were never intended as salacious matter but were representations posed for by the licensee and her then husband with "props" in a spirit of so-called "horseplay" in the presence of a large number of persons at an outdoor picnic and preserved as personal mementos.

It is clear that the large gatherings of women on the various occasions mentioned were for purposes other than pure "sociability" and that the great percentage of the females in question, based on the observations of the agents, were lesbians and were known to be such by the licensee and her employees.

I disagree with the Hearer's comment that it requires "the courage of a lion" to characterize as homosexuals those (women) who wear such "casual" garb as the women in question. I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman.

Accordingly, I find the defendant guilty on Charge 1 and dismiss Charge 2.

The question of penalty has been a matter of grave concern. While, as stated, there is no question as to the licensee's guilt in this case, it may, however, be said in her favor, and in weighing the penalty, that the lesbians observed in her premises were not observed to engage in any lewd or obscene conduct; that, on each of the agents' visits, there were many patrons present who were normal in appearance; and that the available evidence does not indicate that the premises were a haven for lesbians or deliberately designed as a recreational meeting place for them. Under these circumstances and in view of all the facts in the case, I shall suspend defendant's license on Charge 1 for a period of thirty days. Cf. Re V. M. & S., Inc., Bulletin 1345, Item 6.

It is, therefore, on this 10th day of July, 1961,

ORDERED that Plenary Retail Consumption License C-7, for the 1961-62 licensing year, issued by the Township Committee of the Township of Montville to Margaret Simmons, t/a Marge's Keyhole Cocktail Lounge, for premises on Route #46, Montville Township, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m., Monday, July 17, 1961, and terminating at 2:00 a.m., Wednesday, August 16, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

### 3. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING SUSPENSION PREVIOUSLY IMPOSED.

In the Matter of Disciplinary	)	
Proceedings against	)	
Margaret Simmons	)	
t/a Pine Brook Diner and Marge's	)	
Keyhole Cocktail Lounge	)	
Route #46	)	
Montville Township,	)	On Petition
P. O. Pine Brook, N. J.,	)	
Holder of Plenary Retail Consumption	)	O R D E R
License C-7 (for the 1960-61 and 1961-62	)	
licensing years), issued by the	)	
Township Committee of the Township of	)	
Montville.	)	

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BY THE DIRECTOR:

An order having been entered on July 10, 1961, suspending defendant's license for thirty days effective at 2 a.m. Monday, July 17, 1961, and

A petition having been filed herein by Margaret Simmons, the licensee, for a postponement of said suspension because prior thereto she had made definite arrangements for ten affairs to be held on her licensed premises between July 17, 1961, and July 26, 1961, and it appearing to my satisfaction that said affairs had been previously scheduled and that numerous innocent persons would be inconvenienced by the denial of the request for postponement,

It is, on this 14th day of July 1961,

ORDERED that the suspension of thirty days, instead of commencing at 2 a.m. Monday, July 17, 1961, shall, in lieu thereof, commence at 2 a.m. Thursday, July 27, 1961, and terminate at 2 a.m. Saturday, August 26, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1418

October 31, 1961

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New Jersey State Library



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1418

October 31, 1961

1. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE -  
PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

Pappy's Bar, Inc. )  
t/a Pappy's Bar )  
117 S. Mississippi Avenue )  
Atlantic City, New Jersey )

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption )  
License C-55, issued by the Board of )  
Commissioners of the City of Atlantic )  
City. )

-----  
Edward A. Costigan, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On June 10, 11, July 1 and 2, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on the dates set forth in the charge herein. The agents report that on their first visit on Saturday, June 10, 1961 between 11:35 p.m. until 2:45 a.m. on June 11, 1961, there were approximately twenty-five males and two females present; that at the height of the activity during this visit, there were approximately sixty-five males and three females on the premises. Most of the males were apparently homosexuals who were dressed in tight-fitting trousers, multi-colored sport shirts or bulky-knit sweaters, with sleeves pushed up to the elbows, white sneaker shoes, loafers or suede bucks. Their conduct followed the usual pattern: the swishing of the hips from side to side in an effeminate manner, the limp wrist, the high-pitched voice, the frequent use of such terms of endearment as "honey", "dear", "baby" and "mother", when addressing each other.



A female, known as Morgan, who had charge of the kitchen, gave the unmistakable appearance of a lesbian -- she wore male type clothing such as a sport shirt, man's sweater, male trousers and loafer shoes. She wore her hair in a masculine fashion, had no facial makeup, spoke in a rough, raspy tone of voice, and her movements were rough and manly. Dick, the bartender, also appeared to be a homosexual and possessed the above-described characteristics of most of the other patrons. The agents observed these apparent homosexuals holding each other's hands, caress each other affectionately and dance by themselves to the music of a juke box in an effeminate manner. As the agents departed, one of them said to the bartender, "This really is a very nice gay spot you have here", to which the bartender replied, "Thank you, dear."

On Saturday, July 1, 1961 at about 11:15 p.m., the agents returned to the subject premises and remained there until 2:55 a.m. on July 2, 1961, during which time they observed Dick, the bartender, later identified as Ralph Newton Herschner, and Kelly, later identified as Henry Kalisewicz, vice-president of the subject corporation, as two of the bartenders who had been on duty on June 10th. On this visit, there were about ninety males and one escorted female on the premises, most of whom wore the same type of clothing as hereinabove described, and affected the same mannerisms and effeminate conduct which characterized the homosexuals on the previous visit. Dick engaged in obscene and lewd actions, interspersed with obscene language, an exact description and repetition of which would serve no useful purpose in this account. The agents then identified themselves to Dick, who then summoned a person known as "Pappy" (later identified as Frank Bozzi, secretary-treasurer of the defendant corporate-licensee). Informed of these violations, "Pappy" stated, "This place has been gay for twenty years." He then explained that he had taken over the business two years ago, but couldn't change the reputation overnight, and had been trying to "clean the place up" all along.

While Mr. Bozzi, the major stockholder of this corporate-licensee, has insisted that he has tried to "clean his place up", he has not made a very effective effort. By way of alleged mitigation, the attorney for the defendant-licensee has submitted a letter which I have carefully read and considered. His statement asserts that the officers of defendant attempt to run the premises in a businesslike manner, complying with the rules and regulations of this Division. He further states that Dick, the bartender, has been discharged because of his lewd actions.

Proper liquor control dictates that licensed premises are not to become a haven for homosexuals or lesbians. As Judge Jayne stated in Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405, at page 408:

"Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud."

Defendant has a prior adjudicated record. Effective June 25, 1960, its license was suspended for ten days by the Board of Commissioners of Atlantic City for conducting its business as a nuisance (permitting homosexuals on licensed premises).

Considering all of the circumstances in this case, including the prior similar violation which occurred within five

years of the date of this offense, I shall suspend defendant's license for a period of sixty days. Re Stewart, Bulletin 1366, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 18th day of September 1961,

ORDERED that Plenary Retail Consumption License C-55, issued by the Board of Commissioners of the City of Atlantic City to Pappy's Bar, Inc., t/a Pappy's Bar, for premises 117 S. Mississippi Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m., Tuesday, September 26, 1961 and terminating at 7:00 a.m., Monday, November 20, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Jimmy's Tavern, Inc.  
t/a Jimmy's Tavern  
2802 Buren Avenue  
Camden 5, N. J.,

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption  
License C-166, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Camden.

Defendant-licensee, by James W. Eskridge, Officer and Stockholder  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On August 25, 1961 you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly to persons under the age of twenty-one (21) years, viz., Anthony ---, age 18, Donald ---, age 20, Michael ---, age 20, Peter ---, age 20 and Leonard ---, age 18, and you allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On August 25, 1961 you, through James W. Eskridge and Joseph H. Marrini, officers, directors and stockholders of your corporation, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35."

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1430

JANUARY 19, 1962

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1430

JANUARY 19, 1962

1. COURT DECISIONS - CARELIS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL -- DIRECTOR SUSTAINED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No. A-582-60

EFCHARIS CARELIS,  
t/a Hollywood Cafe,

Appellant,

vs.

DIVISION OF ALCOHOLIC  
BEVERAGE CONTROL,

Respondent.

---

Argued November 6, 1961 -- Decided December 21, 1961

Before Judges Gaulkin, Kilkenny and Herbert.

Mr. James V. Segreto argued the cause for the appellant (Messrs. Segreto & Segreto, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the respondent (Mr. David D. Furman, Attorney General, attorney).

The opinion of the court was delivered by

GAULKIN, J.A.D.

The Division of Alcoholic Beverage Control (ABC) charged that on August 13, 18-19 and 21, 1960 Mrs. Carelis "allowed, permitted and suffered" her licensed tavern premises to be conducted "in such a manner as to become a nuisance in that you allowed, permitted and suffered thereon persons who appeared to be homosexuals, viz., females impersonating males, and you allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and you otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20," and that on August 21, 1960, she "sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated, and you allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

She was found guilty on both charges, and her license was suspended for 40 days on the first charge and 15 days on the second charge, or a total of 55 days. She appeals.

## I.

In August 1959 the ABC had written her, cautioning her not to permit lesbians to congregate on her licensed premises and she replied, "Whenever I find such a person she is immediately put out of my establishment."

Agent M testified that on August 13, 1960 there were about 45 patrons in the tavern; about 15-20 were women; of these 6 appeared to him to be "lesbians" -- that is, women dressed and acting like men. On August 18-19, he saw about 25 patrons, about half of them women; 7 appeared to him to be such lesbians. On August 21 there were about 50 patrons, of whom 18 were women. Of these, 11 appeared to him to be such lesbians.

Agent G testified that on August 21 he saw, during a three-hour period, a total of 16 such lesbians on the premises, but never more than 11 at one time. Agent S testified that during a ten-minute period, at about 2 A.M. on August 21, there were 40 to 50 people present, of whom about 15 were women; of these 8 or 9 were such lesbians.

Appellant's contention is that the finding that these women "were apparent lesbians is not supported by substantial, sufficient and competent evidence." Appellant's able and thorough brief very fairly concedes that the scope of our review is limited, as defined in such cases as Hornauer v. Div. of Alcoholic Beverage Control, 40 N. J. Super. 501 (App. Div. 1956) and Fanwood v. Rocco, 59 N. J. Super. 306 (App. Div. 1960), aff'd, 33 N. J. 404 (1960). Appellant does not challenge the truthfulness of the agents. What she says is that the evidence given by the agents of what they observed is not sufficient to support a reasonable conclusion that the women were, or had the appearance of, such lesbians.

We find that the testimony of the agents was fairly summarized by the Director when he said in his opinion that:

" 'The testimony of the agents as to their visit on August 21st with especial reference to Charge 1 is in substantial agreement and may be summarized as follows: that of the fifty patrons (16 or 18 of whom were females) in defendant's licensed premises at one time during the morning in question, at least 8 to 11 were attired in male-type shirts with the top button unbuttoned or some had sweatshirts, many wore tight fitting trousers, one of whom wore dungarees, some of the trousers worn had zipper-fly fronts, 'thick' belts with large buckles, oxford type loafers and tennis shoes. These females according to the testimony of the agents wore no make-up, had short cropped haircuts combed straight back, held cigarettes in the side of their mouths and flicked the ashes therefrom like males. They would gulp a shot of whiskey in one drink, walked with a heavy gait and on one occasion when two of the described females came from the ladies' room they were heard to use filthy language.' "

The alleged lesbians present on the other days in question were similarly described.

The agents testified that these women stayed by themselves, in groups of two or three, and spoke to the female patrons, but not to the male. The ABC concedes that, except for the vile language mentioned above, they were orderly; there was no touching or caressing; no planning or solicitation of immorality; and no molestation or annoyance of other patrons.

Appellant argues strenuously that this is not sufficient to support a finding that these women were or even appeared to be lesbians, especially since Agent G admitted that some of them had eyelashes that were "long and curled", "female type" tweezed eyebrows, and maybe used "lipstick" slightly.

The ABC disagrees and, in addition, stresses the fact that on the several dates these groups of women dressed and acted in a uniformly mannish manner to the degree described. In Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N. J. Super. 405 (App. Div. 1957) Judge Jayne said: "It is often in the plumage that we identify the bird." To this the ABC adds that it can not be put down to mere coincidence when birds of a feather are found repeatedly flocking together. The main entertainment in the Carelis tavern was dancing. The ABC points out that at this summer Saturday night dance (August 20-21) when women ordinarily sport their womanliness and their finery, these women were present attired and acting as men. Mrs. Carelis claimed that they were not lesbians, that several were married, some had children, and at least one was pregnant, but she produced not one as a witness. On the other hand, she testified that these women were not "my customers", but had started to come to her place "recently" because another tavern in the neighborhood had been closed.

Although in Paddock Bar, Inc. v. Alcoholic Beverage Control Division, supra, there were overheard remarks characteristic of homosexuality, we think our holding in that case applies here. We there said (at p. 408) that "The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil." Then, after pointing out that "the evidence was not of the probative quality to establish beyond uncertainty that the specified patrons of the tavern were in actuality homosexuals" and that there was no "proof that any of such individuals indulged in any licentious solicitations on the premises", we nevertheless held that

"...The appellant was charged with the misconduct of permitting persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals habitually and in inordinate numbers (on one occasion, as many as 45) to congregate at the tavern \*\*\*

Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud.

If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise,

demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.

It cannot be logically determined that in the present proceeding there was no circumstantial or inferential evidence productive of the impression, perhaps general, that the patrons under observation were not so-called female impersonators. Logical inferences are more than mere suspicions."

In Murphy's Tavern, Inc. v. Davis, -- N. J. Super. -- (App. Div. 1961) we commented upon "the public interest in tight control over the liquor business" and said that the "primary concern in this regard is maintenance of accepted standards of public decency and morality" in licensed premises. The ultimate concern of the ABC is not only to suppress the existence of "all forms of licentious practices and immoral indecency on the licensed premises" (Paddock, supra, p. 408) but the appearance or even the simulation thereof which might attract patrons because of appeal to their baser instincts. In re Olympic, Inc., 49 N. J. Super. 299 (App. Div. 1958); McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N. J. Super. 61 (App. Div. 1954); In re Schneider, 12 N. J. Super. 449 (App. Div. 1951). In the McFadden case, we said (p. 62):

"...Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession \*\*\*"

For the foregoing reasons, we can not say that it was unreasonable for the Director to conclude that it was a violation of Rule 5 to suffer the repeated congregation in such numbers of women in such attire, acting as they did.

## II.

Appellant concedes that "At the hearing, the agents gave detailed descriptions of the deportment of the alleged apparent intoxicant. This testimony standing alone would, it is conceded, raise a legitimate issue of apparent intoxication." But, says appellant, "this testimony must be considered in connection with the evidence elicited on cross examination, to wit: that the agents were able to question the alleged apparent intoxicant and that his answers were responsive; that when he was asked to walk a straight line of 10 to 15 feet, he was able to walk the straight line, one agent adding that he walked the line slowly; and finally, the patron was able to perform the requested bending test." This, says appellant, wiped out the agents' direct testimony of their impressions of apparent intoxication, and therefore the Director should have found the appellant not guilty of this charge.

Agent G testified that he saw the patron in question "coming from the direction of the restrooms...as he walked toward me he staggered against the wall and he bumped into a stool...and he came

over and he bumped into me...he was staggering--as he approached me he says to me in a slurred voice, he says, 'Let me buy you a beer.' " The agent told him he did not want any. Then, continued the agent, as the patron "was swaying a little bit" the tavern "bouncer", Mr. Kelly, came to the patron and told him "You better get out...you've had enough." Kelly then told the bartender "Don't serve this fellow any more. He's had enough." In spite of this, however, the bartender sold the patron two bottles of beer, a few minutes later. After drinking from one of the bottles, the patron "walked over to the licensee" with the other in his hand, "bumping into the people that were sitting at the bar and walking in a zig-zag manner." When the agent seized the bottle, identified himself to the licensee and informed her of the violation, she immediately remarked " 'I know he's drunk, he's always drunk...I told my bouncer to kick him out'."

In short, not only to the agents but to the licensee and her bouncer, the patron appeared intoxicated. This evidence was not counterbalanced by the fact that thereafter, when all parties went into the back room to complete the investigation, the patron was able to walk a straight line "with a little difficulty", bend down and touch his toes, and answer questions. The test is not how drunk was the patron, but was he drunk or apparently drunk? To the experienced eyes of the agent, bouncer and the licensee, he was. That was sufficient. Freud v. Davis, 64 N. J. Super. 242, 247 (App. Div. 1960); Grant Lunch Corp. v. Newark, etc., Alcoh. Bev. Cont., 64 N. J. Super. 553, 561 (App. Div. 1960).

The judgment is affirmed.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1437

March 12, 1962

ITEM

1. APPELLATE DECISIONS - BROOKSIDE TAVERN v. PEMBERTON
2. APPELLATE DECISIONS - SNUG TAVERN, INC. v. ORANGE
3. DISCIPLINARY PROCEEDINGS (Atlantic City) - NUISANCE (LEWDNESS AND IMMORAL ACTIVITY, FOUL LANGUAGE, APPARENT HOMOSEXUALS, SOLICITATION FOR PROSTITUTION, HOSTESS ACTIVITY) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 155 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Somers Point) - SALE TO MINORS - FAILURE TO DISCLOSE PRIOR SUSPENSION IN LICENSE APPLICATION - LICENSE SUSPENDED 40 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATE DEFERRED.
5. DISCIPLINARY PROCEEDINGS (Trenton) - PERMITTING GAMBLING (NUMBERS) ON LICENSED PREMISES - LICENSE SUSPENDED 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (South Orange) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (BERKELEY TWP.) - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. SALE ON CREDIT AT RETAIL - NEWSPAPER AND OTHER ADVERTISEMENT OF MEMBERSHIP IN CREDIT PROGRAM EXCEPT DISPLAY OF EMBLEM ON EXTERIOR OF LICENSED PREMISES PROHIBITED.
9. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library

3. DISCIPLINARY PROCEEDINGS - NUISANCE (LEWDNESS AND IMMORAL ACTIVITY, FOUL LANGUAGE, APPARENT HOMOSEXUALS, SOLICIATATION FOR PROSTITUTION, HOSTESS ACTIVITY) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 155 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

Harlem Cafe Inc. )  
t/a King Bar & Liquor Store )  
1201-1203 Baltic Avenue )  
Atlantic City, New Jersey )

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption )  
License C-176, issued by the Board of )  
Commissioners of the City of Atlantic )  
City. )

- - - - - )  
Isaac C. Ginsburg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On September 7, 15, 16, 22 and 23, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered persons who appeared to homosexuals, e.g., males impersonating females and females impersonating males in and upon your licensed premises and to frequent and congregate thereon; allowed, permitted and suffered females on your licensed premises to solicit male patrons for and to make overtures to and arrangements with them for illicit sexual intercourse; allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons and customers to purchase numerous drinks of alcoholic beverages for consumption by them and others; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

On September 7, 1961, ABC agents visited defendant's licensed premises and observed among the thirty patrons present five males who were attired in either tight-fitting chino-type pants or dungarees, and some of whom wore pull-over sweaters with the sleeves pushed to the elbow while others had on brightly colored shirts. They also observed that some of these males had long hair, "fluffy" on the top and combed back on the sides, and that several of them walked about on their toes, swishing their hips from side to side and with their wrists limp. Seven female patrons were attired in male-type clothes consisting of dress or sport shirts opened at the collar or "boat neck" polo shirts, trousers with zippered fly fronts, oxford laced shoes or loafers and sneakers. Their hair was short, none wore any "make-up" and they walked with a heavy gait.

On September 15, 1961, agents again visited defendant's licensed premises and observed, among the forty patrons in the place, ten females

five of whom were attired in a similar manner as described by the agents on the aforementioned prior visit, and who departed themselves in a masculine fashion. Moreover, the agents overheard a conversation between an apparent lesbian and a male patron in which the apparent lesbian used filthy and indecent language, the repetition of which would serve no useful purpose. The agents also reported observing three apparent lesbians at various times dancing with other females. The agents left the premises at 12:05 a.m. on September 16th.

On September 22, 1961, at 10:45 p.m., two agents entered the premises in question and, among the thirty-five patrons in the premises, observed ten females, four of whom appeared to be lesbians. Their attire was identical to that worn by females as described on the previous visits. One of these females, dressed as a man, was seen dancing with a female who was later identified as the manager of the establishment and, at times during the dance, they embraced and kissed each other.

On September 23, 1961, at 12:10 a.m., two more agents entered. While two of the agents who came in later were seated at the bar, a female called Butch asked one of the agents for money to play the juke box and then requested him to buy her a drink. When the agent agreed, Butch called to Phyllis Grant (hereafter Phyllis), the barmaid, for service. Phyllis served drinks to the two agents, to Butch and to three other females sitting at the bar and, without asking the agent's permission, took his money lying on the bar in front of him and used it as payment for the six drinks. Butch introduced a female called Gloria, who asked them to buy a drink for her and then called Phyllis and ordered drinks for several females in the area. Phyllis poured "double shots" for all and again took the payment for the drinks from the agent's money. The agent and Gloria discussed having sexual relations and she informed him that it would cost him \$15 for sexual intercourse and \$3 for the room. The fellow-agent called to Phyllis and asked if Gloria was all right as she wanted \$15 from him for sexual intercourse and Phyllis said, "I don't know her too well, but all the girls in here are all right". A short time later, the agent and Gloria left in the agent's car to go to the place where she was staying and, upon entering the bedroom, he gave her two ten-dollar bills, the serial numbers of which had been previously recorded. Gloria went upstairs, but returned to the bedroom and was undressing when there was a knock on the door and, upon opening it, another ABC agent and a police officer entered. The "marked" \$10 bills were received by the police officer from a woman living on the upper floor in the house. In a written statement given to the agents, Gloria admitted that she had invited the agent to her room to engage in sexual relations.

Although the evidence does not indicate that any of the officers or employees actually procured the female to engage in illicit sexual intercourse with the agent, there is no doubt that they were aware of what was occurring on the licensed premises.

Defendant has a prior adjudicated record. Effective March 10, 1951, and October 7, 1952, its license was suspended for five and fifteen days, respectively, by the local issuing authority for an "hours" violation. On January 4, 1959 and June 24, 1960, its license was suspended for twenty days and ten days, respectively, by the local issuing authority for sale of alcoholic beverages to a minor and conducting the place of business as a nuisance. I have read the attorney's letter in mitigation of penalty and his request for leniency. However, for permitting such conduct on the part of patrons as indicated in this case and, furthermore, for allowing the type of persons as described by the agents to congregate on the licensed premises, a severe penalty is warranted.

Under the circumstances appearing herein and considering the defendant's past record, I shall suspend defendant's license for one hundred fifty-five days. Five days will be remitted for the plea entered

herein, leaving a net suspension of one hundred fifty days. Cf. Re Stewart, Bulletin 1366, Item 6, and Re A & B Bar, Inc., Bulletin 1416, Item 1.

Accordingly, it is, on this 22nd day of January, 1962,

ORDERED that Plenary Retail Consumption License C-176, issued by the Board of Commissioners of the City of Atlantic City to Harlem Cafe Inc., t/a King Bar & Liquor Store, for premises 1201-1203 Baltic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, expiring at midnight, June 30, 1962, effective at 7:00 a.m., Thursday, February 1, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FAILURE TO DISCLOSE PRIOR SUSPENSION IN LICENSE APPLICATION - LICENSE SUSPENDED 40 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATE DEFERRED.

In the Matter of Disciplinary  
Proceedings against )

Tony Mart, Inc. )  
t/a Tony Mart )  
939 Bay Avenue )  
Somers Point, N. J. )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption  
License C-9, issued by the Common )  
Council of the City of Somers Point. )

ORDER

-----)  
Robert H. Davisson, Esq., Attorney for Defendant-licensee.  
David S. Piltzer, Esq., Appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred by the Division against the defendant-licensee:

- '1. On Friday night June 30 and early Saturday morning July 1, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Gail ---, age 18, Marlene ---, age 18 and Lillian --, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- '2. In your application filed with the Common Council of the City of Somers Point and upon which you obtained your current plenary retail consumption license, you falsely stated "No" in answer to Question No. 41 which asks: "Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled?", whereas in truth and fact

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1441

April 11, 1962

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ITEM

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3. APPELLATE DECISIONS - SHAPIRO ET ALS. v. CAMDEN AND KOLIOUTAS.
4. DISCIPLINARY PROCEEDINGS (Hoboken) - GAMBLING - PRIOR RECORD OF PREDECESSOR - LICENSE SUSPENDED FOR 50 DAYS.
5. DISCIPLINARY PROCEEDINGS (Millstone) - PERMITTING FEMALE IMPERSONATORS ON LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.
6. DISCIPLINARY PROCEEDINGS (Paterson) - VIOLATION OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
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8. DISCIPLINARY PROCEEDINGS (Jersey City) - VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Lakewood) - SALE AT LESS THAN FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (WANAQUE) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
11. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library

Accordingly, it is, on this 13th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Tessie DiTerlizzi for premises 200 Grand Street, Hoboken, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m., Monday, February 19, 1962, and terminating at 2:00 a.m., Tuesday, April 10, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE IMPERSONATORS ON LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary  
Proceedings against

Fred Ehrlich  
t/a Tollins' Bar  
East side of Hightstown-Perrineville Road  
Millstone Township (near Perrineville)  
PO Perrineville, New Jersey

Holder of Plenary Retail Consumption  
License C-2, issued by the Township  
Committee of Millstone Township.

-----  
Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On September 30, 1961, you allowed, permitted  
and suffered female impersonators in and upon  
your licensed premises; in violation of Rule 4  
of State Regulation No. 20.'

"At the hearing held herein, the Division called as its  
witnesses four ABC agents hereinafter referred to as Agent J, Agent  
C, Agent G and Agent B.

"The testimony of the agents is in substantial agreement  
that on Saturday, September 30, 1961 at about 9:55 p.m., three of  
the thirty males and females in the dining room of the defendant's  
licensed premises were alleged female impersonators; that at about  
10:50 p.m., a fourth female impersonator entered the room; that at  
about 11:40 p.m., the patronage increased to about eighty and sub-  
sequently reached about one hundred; that the four alleged female  
impersonators were made up with rouge, lipstick and eyebrow pencil;  
that three wore female wigs and earrings; that in addition, one was  
attired in female slacks, loafer-type shoes, bulky socks, a ladies'  
sweater and wore a madallion hanging from his neck; another wore a  
yellow shirt, a female sweater, low-cut female shoes, a female coat  
and silk stockings; the third wore a woman's sweater and slacks,  
ballerina shoes and bulky socks and the fourth was dressed in a two-  
piece woolen suit, silk stockings, high heel shoes and carried a  
ladies' purse.

"Agent J testified that at about 10:50 p.m. on the night in question, the four female impersonators and a 'straight female' were sitting at a table in the rear of the dining room; that he asked Mrs. Shaw, a waitress, 'Are they all girls at the table over there?'; that Mrs. Shaw replied, 'There is only one girl at the table and the rest are all boys, and you better believe it', and that Mrs. Shaw pointed out the normal female as the one wearing a blue dress.

"Agent G testified that at about 11:50 p.m. on the night in question, he, in the presence of the licensee, asked each of the four female impersonators whether he were a male or female and that each answered that he was a male.

"Agent G further testified that shortly thereafter he questioned Mrs. Shaw and Mrs. Wright, another waitress, in the kitchen of the licensed premises and in the presence of the licensee and the other agents; that he asked Mrs. Wright how she characterizes the alleged female impersonators; that Mrs. Wright replied, 'They look like males to me. All I can do is go by the way they dress'; that he then asked Mrs. Wright, 'How were they dressed?' and she replied, 'Like women'; that Mrs. Shaw admitted that Agent J had asked her if the alleged female impersonators were women; that her response to Agent J was, 'They look like women, have to figure it out yourself', and then Mrs. Shaw admitted that she had identified the alleged female impersonators as males to Agent J and that they had been visiting the licensed premises for a couple of weeks.

"Agent B was called to testify and it was stipulated by the parties that if examined, his testimony on direct would substantially corroborate the testimony of Agent G.

"Fred Ehrlich, the licensee, testified that he was unaware of the presence in the licensed premises of the alleged female impersonators; that he was a victim of circumstance; that he does not cater to this type of patronage; that, unlike the agents, he is not trained to detect males as such when they are attired as females and that he is unable to inspect each patron as he enters and licensed premises.

"On cross-examination, Mr. Ehrlich testified that until informed by the agents, he did not know of the presence in the licensed premises of the alleged female impersonators; that because of their female attire, 'I couldn't tell. I actually couldn't say that was a woman. I couldn't go up and say, "You are a man"', and that Mrs. Shaw and Mrs. Wright have been employed by him as waitresses for four or five months.

"I have set forth the pertinent testimony with reference to the charge herein. It is quite clear from the evidence that between 10:50 and 11:50 p.m. on September 30, 1961, there were four female impersonators in the defendant's licensed premises; that two of the defendant's employees were aware of this fact and that none of the female impersonators was ordered to leave the premises during their aforesaid visit to the same, despite the fact that an agent alerted the waitresses to their presence. Defendant contends that he did not know of the presence in the premises of the female impersonators and that he is unable to inspect each patron as he enters the licensed premises. Licensees, however, may not avoid their responsibility for the conduct of the licensed premises merely by closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Bilowith v. Passaic, Bulletin 537, Item 3. Moreover, a licensee is under a duty to exercise close supervision over his licensed premises and violations occurring therein cannot be excused because he had no

personal knowledge of them. Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N.J.L. 28. Defendant's contention that he is unable to recognize males as such when attired in female garb is without merit.

"Under the circumstances, and from the testimony of the agents, I find as a fact that on the night of September 30, 1961, the licensee allowed, permitted and suffered female impersonators in his licensed premises.

"After reviewing the evidence and exhibits, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence and recommend that defendant be found guilty as charged.

"When the license for these premises was in the name of Morris Tollin and Fred Ehrlich, such license was suspended by the Township Committee for seven days, effective April 6, 1959 for sale during prohibited hours. Considering there was no immoral conduct or activity displayed by the 'males' in question and the fact that they represented a very small percentage of the total customers, it is further recommended that an order be entered suspending defendant's license for fifteen days on the charge herein, and for an additional five days for the prior dissimilar violation which occurred within the past five years (Re Rubino & Rubino, Bulletin 1421, Item 5), making a total suspension of twenty days."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, the transcript of testimony and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 19th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Millstone Township to Fred Ehrlich, t/a Tollins' Bar, for premises on East side of Hightstown-Perrineville Road, Millstone Township, be and the same is hereby suspended for twenty (20) days, commencing at 1:00 a.m., Tuesday, February 27, 1962, and terminating at 1:00 a.m., Monday, March 19, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,  
1100 Raymond Blvd. Newark 2, N. J.

June 20, 1962

BULLETIN 1453

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leaders are striving to improve.

"I conclude, therefore, that appellants have sustained the burden imposed upon them of establishing that the action of respondent Board was an unreasonable exercise of its discretionary power, and I recommend that said action be reversed."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument to substantiate the exceptions were filed by respondents' attorneys and written answering argument was filed by appellants' attorney.

Having carefully considered the evidence herein, the Hearer's Report, the exceptions to and the argument pro and con with respect thereto, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 27th day of April 1962,

ORDERED that the action of respondent Board in granting the application of respondent Home Liquors, Inc., for a person-to-person and place-to-place transfer of plenary retail distribution license D-158, be and the same is hereby reversed.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS) - UN-  
QUALIFIED EMPLOYEES - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

BRIERHURST ASSOCIATES, INC.  
t/a HOTEL PENN  
81 So. Clinton Avenue  
Trenton 9, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-169, issued by the Board of  
Commissioners of the City of Trenton.

-----  
Joseph S. Bash, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The Division preferred the following charges  
against the defendant:

- '1. On April 19, 29, 30, May 7 and 21, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul,

filthy and obscene language and conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

2. On April 21, 1961, and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of persons not bona fide residents of the State of New Jersey; contrary to and in violation of Rule 4 of State Regulation No. 13.

"When the matter came on for hearing, defendant entered a plea of not guilty to each charge. On recommendation of the Division's attorney, Charge 2 was nolle prossed.

"To substantiate Charge 1, the Division called as its witnesses the two ABC agents who participated in the investigation of defendant's licensed premises. The testimony of each agent corroborates that of the other and may be summarized as follows: On Each of the dates alleged in the charge, both agents visited defendant's licensed premises to ascertain whether or not defendant was conducting its place of business in a manner offensive to common decency and public morals. On their first visit, April 19, 1961, they arrived at 9:10 p.m. and remained until 11:00 p.m. During their stay the patronage increased from five males to 17 males and one female and they concluded from the effeminate mannerisms and speech of half of the males that they appeared to be homosexuals. On the second visit, April 29, 1961, they entered the licensed premises at about 11:20 p.m. and remained until 2:00 a.m. the following morning. During their stay on this occasion, the patronage increased from 23 males and five females to 33 males and seven females, and they concluded that 80 per cent of the males appeared to be homosexuals. On this occasion, an apparent homosexual known as 'Chuck' danced gracefully with one of the females who suggested to him that he should dance alone, to which he replied, 'Oh, I can't do that any more; last time I did I caught hell from Jimmy', referring to James Saccatelli, vice-president and resident manager of the corporate-licensee, who was seated nearby. A male patron seated near Saccatelli greeted Chuck with 'Hi ya, lover', and Chuck replied with, 'Hi ya, lover, I'm at my best behavior tonight'. Chuck purchased numerous drinks for those around him at the bar including the agents and in toasting them would say in an effeminate manner, 'Suck it up'. When Chuck was about to leave, another apparent fag told him that he would see him again and Chuck replied, 'I'm always in here. I'm one of the fixtures'. On May 7, 1961, the agents entered the licensed premises at about 12:15 a.m. and remained until 1:55 a.m. During their stay, the patronage remained at about 36 males (90 per cent of whom appeared to be homosexuals) and three females. One fag seated at the bar was heard to say to another, 'Don't you dare comb your hair any other way. You look like one of the Everly Brothers', and the other said, 'No, I'm one of the McGuire Sisters - Christine, you know the one'. Both fags giggled and were joined by a third who said, 'Oh, don't be so gay', and one of the others rejoined, 'Why not, this is the club house'. A duet and a female named Elou entertained alternately on this occasion and Elou sang double entendre songs which depicted homosexuals and the experiences of a prostitute. About closing time, one fag was heard to say to another, 'Goodnight, honey', and another fag was seen to place his hand on the privates of another who held it there momentarily and another fag was heard to say, 'Drive me home, sweetheart'.

"Before entering defendant's premises on May 21, 1961, both agents had to cross a picket line. When they entered they were met by Mrs. Saccatelli, assistant manager of the licensed premises, who was standing just inside the entrance door. A female in the picket line was heard to say, 'And they'd better get rid of the queers in there. The place ought to be closed up'. The agents and Mrs. Saccatelli proceeded into the hotel lobby and went to the desk at which James Saccatelli was stationed. Mrs. Saccatelli said to her husband, 'Did you hear what she said, she's talking about queers. She should talk'. When the agents said that the female in the picket line had a nerve, Mrs. Saccatelli said, 'Yes, she's more queer than most of them inside'. When it was suggested to her that she didn't have much trouble with the fags, she said, 'No, they're all well-behaved. They keep pretty much to themselves and don't bother anybody. We told them they could come any time they wanted, as long as they behaved themselves and didn't carry on. They are sick people and have to be pitied'. Thereafter the agents went into the barroom where, during their stay, the patronage increased from 45 males and three females to 50 males and six females. The agents concluded from their observation that 90 per cent of the males appeared to be homosexuals. Chuck, who was at the bar, joined the agents and when one of them addressed him as Charley, Chuck said, 'Don't call me that. That's a man's name and I'm a lady. Just call me Miss'. Throughout Chuck's conversation with the agents he would cup his breasts and make suggestive remarks and use expressions such as 'honey', 'baby' and 'sweetheart'. When the agents pointed out that most of the fags wore ties and asked Chuck where his tie was, he replied, 'Real ladies never wear ties'. Chuck later said, 'All these girls in here are looking for a man', and when asked if he ever uses rooms in the hotel, he said, 'I have two rooms always in reserve. Room 25 has a big, beautiful bed. I love it'. When asked if he could take care of both agents, he replied in the affirmative, telling them that he was equipped by nature to do so and when asked what his charge would be he said, 'I only charge when there is someone I don't like and I want to get rid of him; but I always love it too much to think about money'. Shortly thereafter, the agents engaged in conversation with Mr. Saccatelli and when they told him that the crowd was pretty well behaved, he said, 'Yes, we never have any trouble'. Referring to the pianist Elou, the agents remarked that the fags seemed to go for her and Saccatelli agreed. When they asked how long the fags had been coming into the premises, Saccatelli said, 'Ever since she (Elou) started here, last October, I think'. At this point, the agents identified themselves to Mr. and Mrs. Saccatelli and informed them of the violations. Mr. Saccatelli said that the apparent homosexuals had been coming into the licensed premises since last October, but that he never encouraged them to do so. Mrs. Saccatelli asked the agent, 'How can you call anybody queer? You can be sued for libel', and continued, 'We really didn't know what to do when they started coming in, but we never encouraged their business, either'. One of the agents then said to Chuck, who was standing nearby, 'Before you told us you were a gay, what do you have to say about it now?' and Chuck replied, 'Now the circumstances are different; let's not talk about it'.

"The testimony of the agents shows that on each of their visits the bartenders on duty were Robert Wartman and John Chell, Jr. It further shows that the numerous male patrons used a limp wrist action, held their cigarettes very daintily when they smoked, held their glasses delicately, swished their hips from side to side as they walked on the balls of their feet, spoke in a high-pitched, lisping tone of voice and addressed one another in endearing terms such as 'honey', 'baby', 'darling', 'beautiful' and 'mother'.

"Witnesses appearing for the defendant were Police Sergeant John Prihoda, Police Officer John T. Kennedy, James Saccatelli, Mrs. Carol Saccatelli, bartenders Robert Wartman and John Chell, Jr., Nan Wheeler and Samuel Naples.

"The testimony of Sergeant Prihoda and Detective Kennedy who work as a team investigating alcoholic beverage complaints, may be summarized as follows: On May 10, 1961 they visited defendant's licensed premises to investigate a complaint and were told by Mr. Saccatelli that he had been informed by Detective Butcher that a complaint had been received by the Chief regarding homosexuals being permitted on the licensed premises. Mr. Saccatelli said that he was unaware of any such activity in the tavern and was told what he should be on the lookout for. Mr. Saccatelli said he would cooperate and inform his bartenders 'to discontinue serving any people that were homosexuals and even call the police department if they had any trouble'. Mr. Saccatelli then showed them a copy of the letter he had sent to the city authorities and to the State Director requesting an investigation to ascertain if such activity was being permitted on the premises. The two officers visited the licensed premises on May 12, 1961 and remained from 11:45 p.m. to 12:20 a.m. the following morning, and they again visited the premises on May 26, 1961 and remained from 12:05 a.m. until 1:00 a.m., during which times 'we observed no unusual actions on the part of any patron'.

"The testimony of Mr. and Mrs. Saccatelli may be summarized as follows: On May 21, 1961, the agents told Mr. Saccatelli that it was apparent that he had a bar full of homosexuals and that he replied, 'They seem all right to me. They don't seem like homosexuals to me. They are sitting down behaving themselves, whoever they are. I don't know who they are. They are customers as far as I'm concerned and I don't know them to be homosexuals'. He said further that he knew Chuck and never saw him or any other customer act in an unusual manner; that when he asked the agents if Chuck did anything wrong at the bar, one of them said, 'No, Chuck is in the clear as far as I know. We don't want to make no trouble for anybody', and that he replied, 'Well, you're telling me I've got a bar full of homosexuals. As far as I know, I don't see anything and no unusual behavior going on. Can you go in there and point somebody out to me right now? I'll go right up and tell them to get out', and that the agent said, 'Why, no'.

"On cross-examination, both Mr. and Mrs. Saccatelli testified that prior to the agents' visits they had been informed by Detective Butcher that he had received numerous complaints about homosexuals frequenting the licensed premises. They testified further that on one occasion, Mr. Saccatelli ejected five or six men 'because they had come in and put their arms around the other fellows' shoulders when they went in there to say hello'.

"Robert Wartman testified that on May 7, 1961, after the police officer left the premises, one of the agents asked, 'What did the officer want, is there something wrong?'; that he replied, 'There isn't anything wrong', and that when the taller agent said, 'I don't know why they would want to bother the queers here because they're well-behaved', he retorted that there were no queers there, adding, 'In the State of New Jersey a tavern owner or a bartender, if they knowingly knew that they had a queer, they could not serve them'. He further testified that he had been warned previously by Mr. Saccatelli to be doubly careful because of the warning received from Detective Butcher and 'this was constantly in my mind', and that he didn't observe anyone in the place who appeared to him to be a homosexual. With respect to

Chuck, he testified that he has a masculine voice, a crew hair-cut, stands about six feet, walks fast and danced only with females on the premises and that he did not appear to him to be a homosexual; that when the agents told him what Chuck said about taking them to a room to engage in indecent acts he said, 'Excuse my language, he's full of ---'; that he discussed the alleged indecency with John Chell, the other bartender, who asked the agents if it were true and that the agents, in the presence of both bartenders and Chuck, said, 'There is nothing wrong'.

"John Chell, Jr., testified that on May 21, 1961, 'Bob (the other bartender) told me Chuck was talking to these two fellows there and Chuck said he could take care of them, get a room and take care of both of them. Bob told me this here and I couldn't believe it. I got mad at Bob for talking like that. I went down to Chuck and asked him what he had said to the guys, he said, "I didn't say anything". I said, "Come up here with me, I want you to talk to them". I brought him to the two fellows and said, "Come here, Bob, I want you to listen". I said to the two agents, "What did this here goof, that's what I called him, say? Did he say anything wrong?" The agents said, "He didn't say anything wrong, he was just kidding a little bit". I walked away'.

"Mrs. Wheeler testified that she is presently unemployed; that she resides at the Hotel Penn and visits the barroom frequently; that on one occasion she danced with Chuck and that she found nothing effeminate about him or the other male patrons.

"Samuel Naples testified that he has known Mr. Saccatelli for many years; that he had visited the licensed premises from April 19 through May 21 and that he had not observed any of the patrons act in an effeminate manner.

"The following exhibits were received in evidence: D-1 - a letter from Mr. Saccatelli dated May 11, 1961, addressed to the Director, in which he states that the Police Department of the City of Trenton had informed him that complaints had been received by it respecting undesirables who frequent defendant's establishment and assuring the Director that he and his personnel will be on guard to keep them out. S-1 - daily report sheet of Police Officer Joseph Fasanella, in which he states that at 1:45 a.m., Sunday, May 7, 1961, he observed through the bar entrance door of defendant's licensed premises, two unidentified white men embracing and kissing each other; that when he entered the barroom, the men proceeded to the other end of the bar and apparently left the premises; that upon further investigation he observed that the bar was loaded with "queers" who were hugging each other; that the patronage consisted of four women and 25 to 30 males, and that when he informed John Chell of the 'conditions', he was advised to see the manager who was not around at the time.

"Upon completion of the testimony, defendant's attorney, having requested leave to subpoena Officer Fasanella, the hearing was adjourned. When the matter was continued, Officer Fasanella appeared and was cross-examined at length. His testimony substantiates his report.

"The testimony herein has been set out in some detail to show that a high percentage of the males frequenting defendant's licensed premises on the dates alleged were apparently sex deviates.

"Proper liquor control dictates that licensed premises must not become a haven for homosexuals or lesbians. To permit such personages to congregate and fraternize therein is an offense against common decency and public morals which cannot be condoned.

See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405.

"One would indeed be naive to believe that defendant's agents couldn't discern that the males in question were apparent homosexuals. The managers of the establishment had been warned to be on their guard for such personages who, they were informed, could be recognized by their conspicuous guise, demeanor, carriage and appearance. 'It is often in the plumage that we identify the bird.' Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra.

"As was stated by Commissioner Driscoll in Bilowith v. Passaic, Bulletin 527, Item 3, 'Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises'.

"Having had the opportunity to judge the credibility of the witnesses, I find that the testimony of the agents clearly depicts the improprieties that were permitted on the licensed premises on the dates alleged, and that the testimony of defendant's witnesses, for the most part, is incredible. I conclude, therefore, that the Division has established the truth of the charge by a fair preponderance of the believable evidence and I recommend that defendant be adjudged guilty as charged, and that an order be entered suspending its license for a period of sixty days. Re Pappy's Bar, Inc., Bulletin 1418, Item 1."

Written exceptions to the Hearer's Report and written argument to substantiate the exceptions were filed with me by the licensee's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein including the transcript of the testimony, the exhibits, the brief submitted by the licensee's attorney in lieu of oral argument, the Hearer's Report and the exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 30th day of April 1962,

ORDERED that Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Trenton to Brierhurst Associates, Inc., t/a Hotel Penn, for premises 81 So. Clinton Avenue, Trenton, be and the same is hereby suspended for the balance of its term, commencing at 2:00 a.m. Monday, May 7, 1962; and it is further

ORDERED that any renewal of said license shall be and remain under suspension until 2:00 a.m. Friday, July 6, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1456

July 6, 1962

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In the Matter of Disciplinary  
Proceedings against

Vincent A. Lippi  
t/a The Casino  
6 Bank Street  
Paterson 6, New Jersey

Holder of Plenary Retail Consumption  
License C-124, issued by the Board of  
Alcoholic Beverage Control for the  
City of Paterson.

CONCLUSIONS  
AND  
ORDER

-----  
George S. Grabow, Esq., and Harry Castelbaum, Esq., Attorneys for  
Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

- '1. On January 25, 26, 27, 28 and February 11, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., females impersonating males, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene conduct by such persons and by others in and upon your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.
- '2. On February 11, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, the Division called as its witnesses seven ABC agents, hereinafter referred to as Agent R, Agent S, Agent B, Agent Sp, Agent Sr, Agent Mc and Agent C.

"Agent R testified that except for two five-minute intervals (1:30 to 1:35 a.m. and 2:25 to 2:30 a.m.), he was in the licensed premises on Saturday, February 11, 1961 between 12:30 and 3:30 a.m.; that there were twenty males and twenty-five females in the premises; that this patronage remained relatively constant during his aforesaid visit; that about fifteen of the females wore their hair

closely cropped, were devoid of make-up and were dressed in masculine attire; that they wore shirts (with rolled-up sleeves) which buttoned on the right side and had pockets on the left side (men's style); that they wore trousers with zipper flies and pockets in the rear; that several of the females in question wore men's wrist watches and large signet rings; that one of the females had a tattoo on the upper part of her forearm; that unlike females, they walked without swaying their hips, wore men's shoes and spoke gruffly and that, in his opinion, these fifteen females were apparent lesbians impersonating males.

"Agent R further testified that he observed two of the alleged lesbians dancing to rock and roll music supplied by a band; that they had their arms around each other and were resting their hands on each other's buttocks; and that throughout the dance they continuously engaged in bringing the pelvic regions of their bodies together by 'bumps' and with back and forth movements.

"Agent R further testified that Joseph Damiano and Vincent Lippi, the licensee, were tending bar; that his attention was attracted to a male patron (later identified as Sidney W. Clark) drinking beer at the bar; that Clark appeared intoxicated, his hair was slightly disheveled, his eyes were a little glassy, he was bumping into other patrons at the bar and, at times, had difficulty in finding his drink; that in the interval, at about 12:40 a.m., Agent S entered the premises and departed the same at 12:50 a.m. and that Agent B came into the premises at about 1:00 a.m.

"Agent R further testified that about 1:10 a.m. Clark and Lippi engaged in a heated argument; that Lippi stated to Clark that he had too much to drink and physically ejected him from the premises; that at about 2:00 a.m. Clark, accompanied by a male and female, returned to the premises; that they took a position at the bar alongside of Agent B; that Agent B moved to within a foot of Clark; that there was no change in Clark's intoxicated appearance; that at 2:00 a.m. Damiano served a bottle of beer to Clark and two mixed drinks to his companions; that Clark swayed back and forth and, while consuming his drink, bumped into other patrons; that after Clark had consumed his first drink, he observed him walking with an unsteady gait to and from the men's room and bumping into patrons in the course of the same; that at about 2:15 a.m. Damiano served another round of drinks to Clark and his companions; that at about 2:25 a.m. he stated to Lippi that Clark had too much to drink; that Lippi smiled, shrugged his shoulders and walked away; that at about 2:30 a.m. Damiano served a third bottle of beer to Clark; that after observing Clark consume a portion of this drink, he and Agent B seized the same; that at about 2:35 a.m., Agent S re-entered the premises and called the local police, following which seven of the alleged lesbians and other patrons left the premises.

"On cross-examination, Agent R identified Gail Forgash (present at the hearing) as one of the alleged lesbians he had observed on the licensed premises on February 11th and testified that Mrs. Forgash, in her present attire, does not have the appearance of an apparent lesbian; that unlike on February 11th the buttons on her shirt were on the left side and that she appeared to be wearing make-up. Agent R, on further cross-examination, testified that on February 11th, at the height of activity, twelve of the seventeen females in the premises were apparent lesbians; that while on the premises, he had observed about twenty-five apparent lesbians enter and leave the premises and that of this number, twelve to fifteen were constantly in the premises on the morning in question.

"On further cross-examination, Agent R substantially reiterated his direct testimony concerning his observations of the apparent lesbians and description of Clark.

"Agent S testified that between 12:40 and 12:50 a.m. on February 11, 1961, he was in the licensed premises and substantially corroborated the testimony of Agent R. Agent S further testified that at 2:35 a.m., he re-entered the premises and interrogated Lippi and that Lippi, in the presence of Agents B and Sp, identified four of the females in the premises as lesbians.

"On cross-examination, Agent S reiterated the pertinent parts of his direct testimony and further testified that he had recognized two of the apparent lesbians in the premises from previous investigations; that two other apparent lesbians gave their names as Gail Forgash and Sally Pool; that between 12:50 and 2:35 a.m. on February 11, 1961, he was at a post of observation and that he had observed a number of apparent lesbians enter the premises in the company of 'straight' females.

"Upon further cross-examination, Agent S identified Sally Pool (present at the hearing) as one of the apparent lesbians he has observed in the premises, and testified that on the morning of February 11th, Mrs. Pool, unlike her present appearance and attire, wore men's trousers (with cuffs and zipper fly), a red windbreaker jacket, dark-rimmed glasses, a man's wrist watch and a man's shirt (buttons on the right); that her hair was closely cropped and that she was without lipstick.

"Agent B testified that on February 11, 1961, he was in the licensed premises between 1:00 and 3:00 a.m. and substantially corroborated the testimony of Agents R and S.

"On cross-examination, Agent B reiterated the pertinent parts of his direct testimony.

"Agent Sp testified that on Saturday, February 11, 1961, at about 2:40 a.m., he and two local police officers entered the premises; that he observed eight apparent lesbians, four of whom he recognized from previous investigations in the area, and that the eight apparent lesbians were dressed as described by Agents R, S and B.

"Agent Sp further testified that he was present when Agent S was questioning Mr. Lippi with reference to seven females who were in the premises at about 2:45 a.m.; that he heard Mr. Lippi identify four of the females as lesbians; that he heard Mr. Lippi refer to the fifth apparent lesbian as his 'girl friend' and two of the 'straight' females as his wife and mother, respectively.

"On cross-examination, Agent Sp substantially corroborated his direct testimony and further testified that between 12:30 and 2:40 a.m., he kept the premises under surveillance from an automobile parked in a lot about 60 feet from the entrance of the licensed premises; that the area was well lighted; that on several occasions, he observed some apparent lesbians, known to him from previous investigations, enter the premises; that he was able also to detect other apparent lesbians who had parked their cars in his immediate vicinity, enter the premises and that he had also observed some of the apparent lesbians hugging each other and holding hands as they approached and entered the premises.

"Agent Sr testified that he visited the licensed premises on three occasions: January 25th between 11:15 to 11:40 p.m.,

January 26th between 12:05 and 1:30 a.m. the next morning, and January 27, 1961 from 11:55 p.m. to 1:05 the next morning; that on each visit Lippi and Damiano were tending bar; that on his first visit he observed twenty-one patrons (twelve males and nine females, four of whom were apparent lesbians); that on his second visit he observed twelve males and two of the aforesaid four apparent lesbians; that on his third visit he observed twenty-eight males and female patrons, five of whom were apparent lesbians; that on his second visit Agent M followed him into the premises and that on his last visit he and Agent M, followed by Agent Mc, entered the premises together.

"Agent Sr further testified that he first recognized the aforesaid apparent lesbians by their general appearance; that they had closely-cropped hair, no facial make-up and no earrings; that they wore men's trousers (fly front and cuffs), men's style shoes and shirts and that he observed some of them smoke their cigarettes, flick their ashes, hold and consume their drinks in a manner peculiar to the male sex.

"On cross-examination, Agent Sr reiterated the essential parts of his direct testimony.

"Agent Mc corroborated the testimony of Agent Sr with respect to their visit to the premises on January 27th aforesaid.

"On cross-examination, Agent Mc testified that the five apparent lesbians, while walking about the premises, 'swayed their shoulders rather than their hips' and that their voices were gruff.

"Agent C testified that on January 25, 1961, he visited the licensed premises between 9:05 and 11:00 p.m.; that he observed four males and five females in the premises; that he concluded that the five females were apparent lesbians because of their appearance, attire and mannerisms, as testified by Agent Sr; that none of them carried pocketbooks; that they paid for their drinks with money taken from their trouser pockets and that 'they walked in manly fashion, heavy-footed, with swaggering of the shoulders'.

"On cross-examination, Agent C reiterated his direct testimony.

"Vincent Lippi, the licensee, testified that for about fourteen to fifteen years prior to purchasing the licensed business on October 20, 1960, he was a part owner of a licensed premises, a part-time bartender and a tobacco salesman; that the license of his predecessor had been suspended on a charge similar to Charge 1 herein; that he had reopened the premises at the end of the aforesaid suspension; that he had redecorated its entire interior to discourage its former patronage (lesbian) and to invite a 'different type of clientele' and that, in addition, he 'would not permit any two females or women in the bathroom at the same time; they had to go single file. Secondly, I permitted no dancing with the same sex. I permitted no fraternization at the bar between male and female. The biggest problem there was with the female homosexual. I wouldn't permit them to fraternize with one another at the bar. Any time I spotted any of them, I told them to leave'.

"Mr. Lippi further testified that he was able to detect an apparent lesbian from his previous experiences as a bartender; that by February 11 aforesaid, he had eliminated 99 per cent of the former patronage (lesbians) from the premises; that none of the females in the premises on February 11, 1961 were lesbians; that he had observed female couples enter the premises on the morning of

February 11th aforesaid; that he did not recall their attire; that they were well behaved; that there were forty to fifty patrons in the premises; that he did not point out any of the females as lesbians to Agent S; that he did not remember how Sally Pool and Gail Forgash were dressed; and that he had noticed that some of the females were dressed in a manner as described by the agents.

"The licensee further testified that on February 10th aforesaid, Clark entered the licensed premises between 10:30 and 11:00 p.m.; that he served Clark two bottles of beer; that at about 11:30 a.m. he observed Clark in an argument with another patron, following which they left the premises; that between 1:30 and 1:45 a.m., Clark returned with a male and female; that Damiano served them a few rounds of drinks, and that at no time did Clark appear intoxicated while in the premises.

"On cross-examination, Lippi testified that for a period of eight years prior to October 20, 1960, he was tending bar on and off for a licensee whose license was subsequently suspended on a charge similar to Charge 1 herein; that he had also held forty-eight per cent of the stock of a corporate-licensee; that its license had been suspended on a charge of permitting immoral activities (strip-tease) in the licensed premises; that many of the patrons who had visited aforementioned premises had become patrons of the licensed premises in question; that some were females who dressed in a style as testified by the agents and that between October 20, 1960 and February 11, 1961, he had invited many apparent homosexuals to leave the premises.

"On further cross-examination, Mr. Lippi reiterated that Clark did not appear to be intoxicated; that Clerk 'looks shot most of the time' and that at no time did Agent R speak with him with reference to Clark or state to him that Clark had had too much to drink.

"Gail Forgash, on behalf of the defendant, denied that she was a lesbian and further testified she was 22 years of age; that she had been married on July 16, 1960 and lived with her husband for 'a couple of months'; that she was a patron of the licensed premises and that she lived in a room above the same.

"Mrs. Forgash further testified that on occasion she wore dresses; that she favored slacks; that at about 9:00 p.m. on February 10, 1961, she came into the licensed premises to meet Tom Dodd, with whom she had an appointment; and that she wore slacks, a shirt, white sneakers and girl's white socks.

"On cross-examination, Mrs. Forgash testified that she has been living separate and apart from her husband; that except for lipstick, she was presently without facial make-up; that her hair is cut very short; that she was wearing girl's sneakers, slacks and socks and female undergarments; that she does not try to effect the appearance of a male; that her slacks had a zipper on its side; that on February 11th aforesaid, she wore slacks with a fly-front zipper; that on occasions she uses nail polish; that she has none today and that she wore none on February 11th aforesaid.

"Sally Pool, on behalf of the defendant, denied she is a lesbian; denied that she 'dates' females and further testified that ever since October 20, 1960, she has been a patron at the licensed premises; that she resides in a furnished room above the same; that she is 33 years old; that she was married in 1945, divorced in 1955, and remarried her former husband in 1957; that she is the mother of four children; that on February 11, 1961, and for about three months prior thereto, she had been employed as a porter in the licensed premises and that within the past year she has been employed as a taxi dispatcher and power press operator.

"Mrs. Pool further testified that while employed as aforesaid



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1488

January 7, 1963

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1488

January 7, 1963

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 75 DAYS.

In the matter of Disciplinary  
Proceedings against

JOCKEY CLUB, INC.

T/A JOCKEY CLUB

5-7-7 $\frac{1}{2}$ -9 S. North Carolina Avenue  
Atlantic City, New Jersey

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-139, issued by the Board  
of Commissioners of the City of  
Atlantic City.

-----)  
Harry Castelbaum, Esq., Attorney for Licensee.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

1. During the early morning hours of Sunday, February 18, 1962, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered female persons to perform for the entertainment of your customers and patrons in a lewd, indecent and immoral manner and to engage in obscene, indecent, filthy, lewd, lascivious and disgusting acts while so performing; in violation of Rule 5 of State Regulation No. 20.
2. On the occasion aforesaid you allowed, permitted and suffered females employed on your licensed premises to accept food and beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.

"To substantiate the charges the Division produced ABC agents S and G who participated in the investigation of the licensed business.

"The testimony elicited from Agent S on direct examination, and corroborated by that of Agent G, is substantially as follows: Both agents entered the licensed premises at 12:05 a.m. Sunday, February 18, 1962, and went directly to the barroom in which there were about eighty-five patrons. Forty to fifty of the males and four females were at the bar consuming drinks served by two bartenders, one of whom was Harold Abrams (manager of the establishment). The agents conversed with several patrons and learned that the group was in Atlantic City attending a national convention of school administrators. At about 12:30 a.m. the patrons lined up

and awaited admission to a spacious and well-appointed room from which others were emerging after viewing the first performance of a floor show. The agents joined the line and, when admitted, took seat at a right-center table approximately ten feet from a three-foot elevated semi-circular stage, around the edge of which was a three-foot high railing with supports, in the center and at the right rear of which were openings. A service bar in the show room was attended by bartender who filled orders for six waitresses, one of whom (called Eleanor) served those at the agents' table, and on the stage a five-piece orchestra played selections while awaiting the commencement of the second floor show. At 1:15 a.m. approximately three hundred persons were in attendance, 99% of whom were males. A male MC opened the show by telling a few jokes and then introduced in their turn six female performers, four of whom (known as Rosita, Janet, Bonnie and Fermina) engaged in dance routines. Each dancer appeared on the stage in a concealing outergarment and, after dancing about and posing for few minutes, she removed the outergarment and continued her routine garbed in a transparent net bra covering 'pasties' and transparent net pants covering a 'patch' in the pubic area. Rosita engaged in bumps and grinds in tempo with the music and beat of the drums; took eyeglasses from males standing at the railing and placed them inside her 'patch' before returning them; rotated her buttocks on the heads of five or six male patrons, rubbed her breasts in their faces, and allowed them to grab her around the waist and pull her toward them. Janet engaged in the same type of performance and later removed her bra and 'pasties.' Bonnie, who had bells hanging from her bra and pants, allowed the patrons to ring them, then straddled a chair and simulated sexual intercourse after which she manipulated a large plug so that it would wilt and stiffen when she caressed it. Finally she removed her bra, 'pasties' and pants but not the 'patch.' Fermina engaged in acts similar to those of the previous performers, took a banana from her hat and kissed and caressed it, removed her bra and 'pasties' and, when the patrons clamored for 'more, more; take it off, take it off', she removed the 'patch' and stood on the stage completely nude, holding the 'patch' above her head.

"Further testimony elicited from Agent S, and corroborated by that of Agent G, shows that, just before the second show commenced, they observed Rosita seated at a table drinking with an elderly man whom she kissed and who on two occasions placed money between her breasts. They further observed Janet mingling and drinking with several patrons.

"About this time Bonnie and another performer named Kay introduced themselves to the agents and took seats at their table. Bonnie then called Eleanor (the waitress) and told her that they would have the usual. Eleanor went to the service bar and returned with a 4/5 quart bottle of sparkling burgundy and a 4/5 quart bottle of champagne, each in a carton containing ice. Kay filled two glasses and asked the agents to taste the wine, saying 'They are \$12 a bottle. You don't mind, do you?' Bonnie then ordered cheese and crackers and, when the waitress said, 'It can't go on the tab', Agent S gave her a dollar. Before leaving the table for her performance, Bonnie ordered another bottle of sparkling wine. After she and Kay had completed their performances, they returned to the agents' table and Kay asked, 'Will it be all right to order another bottle?' and inquired if Agent G had enough money. When Agent G said, 'Why don't you wait until the show is over', Kay suggested that he give her the \$12 as a tip instead of paying for another bottle of wine.

"When the last act had concluded, the agents identified themselves to Bonnie, Kay and Eleanor and proceeded with them to the main barroom where they identified themselves to Harold Abrams (the manager). Rosita and Fermina joined them and Agent S described in



detail the indecent actions of the entertainers. Rosita, Bonnie and Fermina admitted that they performed in the manner described by the agents. However, Fermina denied that she was completely nude at any time. Eleanor admitted serving the wine to Bonnie and Kay and, when the agents asked her for their tab, Abrams said, 'Let's say for the record I refused to present you with a bill.' Abrams also stated that he did not see the second show and continued, 'If we don't put a show like this on, we might as well close the doors. In the winter-time, when there is no conventions, there is no business. If we don't put this kind of a show on, we don't have any business.'

"Witnesses appearing on behalf of the licensee were Harold Abrams (manager of the Jockey Club, Inc.); Sergeant Louis Schwartz (of the Atlantic City Police Department); Joseph Stern (investigator with the Liquor License Bureau of Atlantic City); Peter Daly (retired captain of the Jersey City Police Department); William Dunbar (acting desk sergeant of the Atlantic City Police Department); Edward Rink (patrolman of the Atlantic City Police Department); Mario Floriani (Captain of the Atlantic City Police Department); Bonnie Bell, Kay Martin and Rosita Rodrigues (entertainers); ABC agents T, Su and J; Vito DiGiorgio (a baker) and Edward Woolbert (a physician).

"Harold Abrams testified in substance that he has had over fifteen years experience in managing night clubs and has been manager of the Jockey Club for one year; that the entertainers were hired through a recognized theatrical agency; that Rosita had been entertaining in the Jockey Club prior to his employment; that Janet had been employed for three or four months and Bonnie and Fermina for a couple of years on and off; that he did not see the second show on February 18, 1962, but had observed the girls perform on numerous occasions and never saw them act in the manner testified to by the agents; and that, when the agents identified themselves, Agent S told him that, other than the closing act, it was a fine show. Mr. Abrams denied that he told the agents, 'If we don't put a show like this on, we might as well close the doors' and he further denied that Agent S, after identifying himself, described any of the indecent acts to which he testified.

"Sergeant Schwartz testified in substance that his assignment is the investigation of criminal matters; that he viewed the first floor show on February 17, 1962, and left while the last act was in progress; that the female entertainers wore bras and pants throughout their performance; that their acts did not tend to arouse sexual passions and that the Jockey Club is known 'to have a very entertaining show.'

"Investigator Stern testified in substance that he viewed the first floor show on February 17, 1962; that he observed nothing indecent in the dance performances and that, although the Jockey Club license was suspended for ten days in 1960 for permitting homosexuals on the licensed premises, the Club is considered one of the finest in Atlantic City.

"Captain Daly testified in substance that he viewed the second floor show on February 18, 1962, and did not observe any indecent conduct on the part of the entertainers on that occasion or on any occasion when he visited the Jockey Club during the past twenty-five years.

"Sergeant Dunbar testified in substance that he, with his wife and daughter, frequently visited the Jockey Club during the past year but did not see Rosita or Bonnie perform, and that the establishment has a good reputation.

"Patrolman Rink testified in substance that he, his wife and

friends visited the Jockey Club on occasions; that he did not recall seeing Rosita, Janet, Bonnie or Fermina perform; that the Club has a good reputation and that the entertainment is very good.

"Captain Floriani testified in substance that he visited the Jockey Club about twice a year; that last summer he and his wife saw the floor show; that the entertainment was good but that he did not see Janet or Fermina and did not recall seeing Rosita.

"Bonnie testified in substance that she is married and has been a professional dancer for eleven years, having performed in the United States and Europe; that she does the same routine dance at all times; that she appears wearing a gown which she removes, and is attired in a bra with bells and pants with bells in the front and fringe in the rear; that she sits on a chair attached to which is a large red feather; that, after posing, she waves the feather around for decoration and color 'mostly comedy', then dances around to make the bells ring; that she does not wear a 'patch' under her pants; that she does not consider her dance to be bumps and grinds; that during her performance on February 18, 1962, the patrons did not ring the bells although they tried to, and that no one touched her; that, because of the large gathering and the applause she received, and because she had been drinking, she departed from her routine and removed her bra underneath which were 'pasties' which she covered with a transparent shawl; and that she was not completely exposed. She further testified that during the second show she and Kay sat with the agents except when doing their acts; that a few men stood up at the railing blocking her view and the view of the agents who remained seated; that, when the show was over, the agents identified themselves and she and Kay accompanied them to Mr. Abrams; that, when the other performers arrived, the agents questioned all of them as to their age, marital status, length of employment, and how they got their jobs; that the only act the agents objected to was Fermina's, stating that she was completely nude; that Fermina became indignant and said she had on a 'patch' of black feathers which she brought from the dressing-room for the agents' inspection. Bonnie then described the acts of the other girls and denied that the dancers performed in the manner testified to by the agents.

"Kay Martin (a singer) testified in substance that, because of the large crowd, the entertainers were a little more 'effervescent'; that she was seated with the agents and did not see all of the show because men were standing at the railing; that, after the agents identified themselves, they asked each performer her age, her marital status, the length of her employment, and how she got the job; that they found no fault with the acts of any of the entertainers except Fermina's performance, and they said they thoroughly enjoyed the show.

"The ABC agents (T, Su and J, subpoenaed by the licensee) testified that on March 19, 1962, they saw Bonnie's performance at another licensed premises in Atlantic City, viz., Jeannie's Enterprises, Inc., trading as LeBistro, at which time she did not use a chair in her act. They further testified that there was nothing indecent about her performance on that occasion.

"Rosita testified that she is married and lives with her husband and six-year-old daughter; that she worked for the Jockey Club for three years; that the agents never criticized her performances and the only fault they found was with Fermina's act. She denied everything to which the agents testified.

"Vito DiGiorgio testified that he conducts a bakery business close to the Jockey Club; that he viewed the second floor show on February 18, 1962, and did not see anything objectionable.

"Dr. Woolbert testified that he visited the Jockey Club several times each month; that he viewed the second show on February 18, 1962, and that he did not see the dancers engage in any indecent or lewd acts.

"Having carefully considered the evidence adduced herein and having had the opportunity to judge the credibility of the witnesses, I find as a fact that the various entertainers engaged in the physical acts as testified by the agents and that such acts were obscene, indecent, filthy, lewd, lascivious and disgusting as charged.

"I further find as a fact that females employed by the licensee were served food and alcoholic beverages at the expense of male patrons, notwithstanding that, when the agents identified themselves, the licensee's manager refused to present the bill for the drinks served.

"I further find that the testimony of those witnesses who were not present during the performance in question is of little, if any, materiality, as is the conclusion of those attending the performance who, by their lights, found the performance unobjectionable.

"I conclude, therefore, that the Division has established the truth of both charges by a preponderance of the believable evidence, and I recommend that the licensee be adjudged guilty as charged.

"The licensee has a prior adjudicated record. Effective January 5, 1959, its license was suspended by the Director for the balance of its term for permitting homosexuals and immoral activity on the licensed premises (Re Jockey Club, Inc., Bulletin 1259, Item 5), and effective June 24, 1960, its license was suspended by the local issuing authority for ten days on a homosexual charge.

"The minimum penalty for indecent entertainment on licensed premises involving a strip-tease routine is thirty days (Re Paddock International, Bulletin 1429, Item 2). However, in view of the audience participation in the obscenities, it is my considered opinion that the instant case involves an aggravated violation. I, therefore, further recommend that an order be entered suspending the license for forty-five days on the first charge and for twenty days on the second charge (Re Paddock International, *supra*), to which should be added ten days for the two prior dissimilar violations which occurred within a five-year period (Re Mandel, Bulletin 1472, Item 2), making a total suspension of seventy-five days."

Written exceptions to the Hearer's Report and written argument in substantiation of the exceptions were filed with me by the attorneys for the licensee and the Division within the time limited by Rule 6 of State Regulation No. 16, and thereafter oral argument was heard before me.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the memorandum filed with the Hearer by the licensee's attorney, the Hearer's Report, the exceptions and argument with respect thereto and the oral argument before me, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 19th day of November 1962,

ORDERED that plenary retail consumption license C-139, issued by the Board of Commissioners of the City of Atlantic City to Jockey

Club, Inc., t/a Jockey Club, for premises 5-7-7 $\frac{1}{2}$ -9 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for a period of seventy-five (75) days, commencing at 7 a.m. Wednesday, November 28, 1962, and terminating at 7 a.m. Monday, February 11, 1963.

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - PERMITTING CONSUMPTION BY MINORS -  
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS - NO  
REMISSION FOR PLEA ENTERED AT HEARING.

In the Matter of Disciplinary Proceedings against )

TOM AND JERRY'S INC.  
T/A TOM & JERRY'S  
236 Monticello Avenue  
Jersey City, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-81, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

-----)  
William A. Massa, Esq., Attorney for Licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

At the hearing herein, licensee pleaded non vult to a charge alleging that on September 29, 1962, it permitted consumption of alcoholic beverages by four minors, two age 17, one 18 and one 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days, effective March 5, 1962, for sale in violation of State Regulation No. 38. Re Tom and Jerry's, Inc., Bulletin 1445, Item 7.

The minimum suspension of license for sale to two minors age 17, in cases unaggravated by record of prior suspension, is twenty days. Re Liebert, Bulletin 1453, Item 3. However, where, as here, two additional minors are involved and the licensee has a record of previous dissimilar offense within the past five years, the penalty is increased by ten days (cf. Re Harbor Inn, Inc., Bulletin 1428, Item 3), making a total suspension of thirty days without remission for the plea when, as here, it is entered at the hearing. Re Roosevelt Hotel, Inc., Bulletin 1470, Item 1.

Accordingly, it is, on this 20th day of November, 1962,

ORDERED that Plenary Retail Consumption License C-81, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Tom and Jerry's Inc., t/a Tom & Jerry's, for premises 236 Monticello Avenue, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 A.M. Tuesday, November 27, 1962, and terminating at 2:00 A.M. Thursday, December 27, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

June 4, 1963

BULLETIN 1515

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

June 4, 1963

BULLETIN 1515

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
PRIOR SIMILAR RECORD OF LICENSEE AND PREDECESSOR IN INTEREST -  
LICENSE SUSPENDED FOR 240 DAYS.

In the Matter of Disciplinary  
Proceedings against

ELCOR, INC.  
t/a ENTERTAINER'S CLUB  
169 S. Westminster Avenue  
Atlantic City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-28, issued by the Board  
of Commissioners of the City of  
Atlantic City.

-----  
Albert J. Perrella, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge as follows:

"On August 18, 25 and 26, 1962, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that on August 18 there were approximately sixty patrons present and on August 25-26 approximately ninety, and on each occasion approximately 95% were apparent male homosexuals. In addition, one of the bartenders (a 12% stockholder of the corporation) also appeared to be a homosexual. Also present on both occasions in an apparent managerial capacity was Louise G. Mack who, according to the application for license, is the holder of 75% of the corporate stock stated to be held as collateral.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective September 10, 1962, for similar violation. In addition, its predecessor in interest, Louise G. Mack, from whom the license was transferred, has a record of three suspensions of license for similar violation, viz., (1) by the Director for one hundred ninety days, effective November 14, 1955 (Re Mack, Bulletin 1088, Item 2), and by the municipal issuing authority for (2) ten days,

effective June 24, 1960, and (3) sixty days, effective September 5, 1961.

The current minimum suspension for a first offense of permitting the simple congregation of a relatively large number of apparent homosexuals, with no evidence of overt acts or immoral activity, the situation here, is sixty days. Re Ashen, Bulletin 1495, Item 7. However, considering the prior record of the licensee and its predecessor in interest, to whom it is linked by the continued stockholding of Louise G. Mack (cf. Re Pastrana's Bar, Inc., Bulletin 1505, Item 5) and its apparent employment of her (cf. Re Taccetta, Bulletin 1485, Item 2), of four prior similar violations and the repetitive nature thereof (this being the fourth similar within five years), as well as the plea entered, under all of the circumstances the license will be suspended for two hundred forty days, with admonition to the licensee that future similar violation may well result in outright revocation of the license.

Accordingly, it is, on this 1st day of May, 1963,

ORDERED that Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Atlantic City to Elcor, Inc., t/a Entertainer's Club, for premises 169 S. Westminister Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 7:00 a.m. Wednesday, May 8, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Friday, January 3, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1521

JULY 15, 1963

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5. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1521

JULY 15, 1963

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR  
55 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

CLARENCE HOOVER )  
t/a HOOVER'S TAVERN )  
West side of Tabor Road )  
about 500 feet south of Maple Ave. )  
Parsippany-Troy Hills )  
PO Morris Plains RFD, N. J., )

ON REMAND  
CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-12, issued by the Township )  
Committee of the Township of Parsippany- )  
Troy Hills. )

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McGovern and Roseman, Esqs., by William J. McGovern, Esq.,  
Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This matter comes before me pursuant to an Order of  
Remand dated April 18, 1963, from the Superior Court of New  
Jersey, Appellate Division, which said order directs that a full  
and complete new hearing and findings of facts and conclusions  
of law shall be made herein.

"Accordingly, the matter was set down and hearings (four  
days) commenced on the date set forth in said order and were  
concluded on April 30.

"The licensee pleaded not guilty to the following  
charges:

- '1. On December 8, 9, 16, 29 and 30, 1961, you  
allowed, permitted and suffered your licensed  
place of business to be conducted in such manner  
as to become a nuisance in that you allowed,  
permitted and suffered persons who appeared to  
be homosexuals, e.g. males impersonating females,  
in and upon your licensed premises; allowed,  
permitted and suffered such persons to frequent  
and congregate in and upon your licensed premises;  
and otherwise conducted your licensed place of  
business in a manner offensive to common decency  
and public morals; in violation of Rule 5 of State  
Regulation No. 20.
- '2. On Saturday, December 16, 1961, between 3:00 a.m.  
and 3:15 a.m., you permitted the consumption of  
alcoholic beverages on your licensed premises; in  
violation of Article 3.11 of Revised Ordinances of

the Township of Parsippany-Troy Hills  
New Jersey, 1953, adopted November 10, 1953.'

"At the hearing held herein the Division called as its witnesses two ABC agents, hereinafter referred to as Agent S and Agent G.

"The testimony of Agent S may be summarized as follows: In the company of Agent G he visited the licensed premises on the dates set forth in the first charge. On February 8, at about 10:05 p.m., they arrived at the premises and seated themselves at the bar. At that time there were five males and two couples. The patronage continued to increase, and by 12 p.m. of that date there were about thirty-three persons, of whom twenty-one were males. All the males were seated in the same general area and apparently were part of the same group. Of the twenty-one males, fourteen attracted his attention for the reason that, while they were attired in normal male attire, their conduct and mannerisms manifested an appearance of males impersonating females. The mannerisms and conduct were more particularly described as follows: They spoke in lispy and high-pitched tones; used limp-wrist motions; most of them flicked their cigarettes with the index finger in a feminine manner; sipped their drinks 'very femininely', 'very slowly and daintily'; rolled their eyes at one another; when they moved about the premises they walked on the balls of their feet and swished and swayed their hips in a feminine manner. He also observed that a number of these apparent homosexuals traveled in pairs and, when two apparent homosexuals entered together, one would assist in seating his companion, then purchase the drink for the other in the manner of a man taking the active part, while the other would be the passive recipient in the manner of a female. The 'man' would order the drink and pay for the drink such as an ordinary male and female couple might act normally. He also noticed that two of the apparent homosexuals placed their arms about each other's waist while they were talking, rolled their eyes at each other and made endearing motions.

"During this time James Renna (hereinafter Jim) was entertaining at the counter on a platform behind the bar, and Clarence Hoover (hereinafter licensee) was in and about the said premises. Jim sang a few songs and made references to female breasts, simulating the nipples during his rendition of a song called 'Cup Cakes.' These songs were directed to this group of apparent homosexuals, and the agent observed that they reacted by rolling their eyes at each other and 'one fellow would place an arm around the other's neck.' At some time during the evening, Jim passed Joseph Passalacqua (hereinafter Joe) who was tending bar and placed his hands on Joe's hips from behind, rubbed his pants against Joe's buttocks, rotated a little bit and said 'I may never get a chance like this again' to the appreciative laughter of this group of apparent homosexuals. The agents left the premises at 12:50 a.m.

"At 12:01 on Saturday, December 16, the agent, in the company of Agent G, entered the premises and seated himself at the bar. At this time he noted that the licensee was tending bar and Jim was entertaining as he had on the previous occasion. This time it was noted that there were twenty-one males and three couples; the males were congregated on the right side of the bar and the female couples were on the other side of the bar. The males attracted his attention because their mannerisms, actions and conduct appeared to be the same as described on

the previous occasion, with the following additional description: They would move their hips from side to side; in talking, they would use the limp-wrist movements; some of them would protrude their tongues as they conversed; they were very close, endearing and affectionate to each other. He noted that a number of these apparent homosexuals entered the premises in pairs and several departed in pairs, and that they joined the group upon entering. The actions, mannerisms and conduct of this group of males made it clear to this agent that they were males impersonating females, more commonly known as 'fairies, fags, queers.'

"On Friday evening, December 29, at 10:15 p.m., this agent, in the company of Agent G, re-entered the premises, this agent entering first and Agent G following him shortly thereafter. At that time there were eighteen males in one section of the bar and two couples on the other side of the bar and two females in the company of the licensee. Of the eighteen males who were at the premises at the height of the activity, seventeen attracted his attention because they appeared to have the mannerisms, characteristics, actions and conduct hereinabove described on the previous occasions, with the additional characteristic that some of them used a lispy tone of voice when conversing with each other. This agent got into a conversation with Jim during the break in his performance, and Jim was asked whether he ever takes out any of these 'fags.' He replied, 'I go for a change, a litte variety.' Agent G inquired 'Do you think he could make out? Can I get one of the fags?' and Jim replied 'Take your pick. There are plenty of them in here.' Jim further volunteered that these apparent homosexuals frequent the premises on Friday nights and that they are good for business whenever patrons aren't around. They then engaged Joe, the bartender, in conversation and he admitted that all of the eighteen males congregated on the other side of the bar were 'girls.'

"The agent then approached the licensee who was seated at the bar purchasing drinks for two females in his company and kissing one of them. He identified himself by exhibiting his credentials and they retired to a stockroom in the rear of the premises. The agent then asked the licensee why all these homosexuals are on the premises and the licensee replied 'You call them fags and I call them fags. You know what they are, and I know what they are. Did they solicit you? Did they solicit anyone? They don't bother anyone. I don't let them bother anyone.' He further stated that he keeps a close watch on them; that he caught two of them fooling around in a car on his lot and chased them. While he was discussing this with the licensee, two more males entered the premises and they appeared to be homosexuals. The agent pointed them out to the licensee who smiled and didn't answer. The bartender Joe was thereupon summoned to the room and was questioned by the agents as to the period of time within which these apparent homosexuals had been frequenting the premises. As he was about to answer, he was enjoined by the licensee. Jim thereupon entered the room and he too was ordered by the licensee to remain silent and refuse to answer any questions.

"This agent's testimony remained substantially unshaken under a vigorous and protracted cross examination. It was developed on cross examination that the premises were well lighted and he was able to note that half of the apparent homosexuals were making 'goo-goo' eyes at the others on December 29. He also reiterated his testimony with respect to the simulated sodomy performed by Jim on Joe on December 8.

It was further developed that on December 29 he observed two apparent homosexuals dancing with each other and, while they did not dance during the entire period, were on the floor for some time before they were told to leave the floor by Joe.

"Agent G substantially corroborated the testimony of Agent S and added the following: On one of these visits he noticed that one of the apparent homosexuals put his hand around the waist of another and let it rest there. Also he observed that most of these apparent homosexuals entered the premises in couples or pairs. One would fix the chair for the other, take his coat to the cloak room, order drinks and pay for such drinks in the manner of a male treating his female companion. On all of these visits the agent observed that the apparent homosexuals were grouped together at one section of the bar. He described their conduct and mannerisms in the same manner as described by Agent S. He noted that they walked on the balls of their feet, that they swished and swayed their hips, they held the glass daintily, took small sips and placed the glass gently on the bar; they flicked their ashes with the index finger. He also noted that the normal male and female couples seated at the other side of the bar appeared to enjoy the conduct of these apparent homosexuals; would whisper and giggle. He also heard these apparent homosexuals frequently use the terms 'honey' and 'Sweetie.' The agent also testified to these double entendre or double-meaning songs which were rendered by Jim on December 8. They included 'Cup Cakes' and 'Rose of Washington Square' and he corroborated the testimony of Agent S with respect to the simulated sodomy performed by Jim on Joe the bartender.

"This agent also testified with respect to the second charge that on December 16 he remained at the bar after Agent S left the premises, and at 2:59 a.m. (by his wristwatch) was served a beer. He finally consumed this drink at 3:15 a.m. checked his wristwatch again for the exact time (at 3:15 a.m.) and left the premises. There were patrons at the bar after 3 a.m., and at his departure one couple still remained on the premises. At about 3:17 a.m. he observed this couple leave. He also noted that during the period between 3 and 3:15 a.m. the patrons on the premises were served and were permitted to consume their drinks. When he left the premises he was joined by Agent S and they departed the area, and immediately thereafter made a written notation of the time.

"His testimony on cross examination remained unshaken but he admitted that he saw no lewd or immoral acts on the part of the patrons on his visits, other than that hereinabove described. He admitted that he did not point out any individual as a homosexual and merely referred to the entire group as being apparent homosexuals.

"The licensee testified in his own behalf and, in addition, produced Jim and Joe. Jim testified as follows: He is an entertainer on weekends at the licensed premises and has been an entertainer for the past twenty years. He insisted that there is no difference in the manner of holding a glass between a male and a female; that the walk of a female is the same as that of a male, regardless of whether the female wears high heels or low heels. He noted that many people who walk in the manner described by the agents included fighters, tennis players, etc.

He said it was characteristic of these athletes that they walked with a springy motion. He denied being aware of any of the characteristics of a homosexual. He also stated that he discerned no difference in the movement of the hips of a female and that of a male while walking and, in any event, the male patrons at the premises walked in a normal manner on the dates in question. He denied hearing any of the males talking in a lispy tone nor did he see any of the males protrude their tongues in the manner described by the agents. He felt it was common practice to buy each other drinks and this was no marked action of an apparent homosexual; he did see certain males affectionately tap others on the back or the shoulder but denied that there was any embracing or any rolling of eyes or 'goo-goo' eyes, and he insisted that the patrons were normal in every respect.

"He further testified that, on the December 16 visit of the agents, Agent G mentioned that he goes for 'fags' and this witness responded 'I get no message.' With respect to the December 29 occasion he stated that he did sing several stanzas of 'The Baker's Daughter' but denied that it had any double meaning. He also sang the song 'Cup Cakes', the first two lines of which are as follows:

✓ 'I love to nibble on those cupcakes. I go nut about their taste. They seem to melt right in my mouth. She never had complaint. They are smooth as silk and rich with milk.'

"On cross examination he was asked specifically what his conception or definition was of a homosexual. He replied that a homosexual is one 'with a lot of lipstick, wears a lot of lipstick, eyebrow pencil, smells and stinks of perfume.' He stated that the only place he saw homosexuals dressed occasionally in female attire was on a main thoroughfare in Newark. He was asked the following question:

'Q. ...If you were to go into an establishment or in a room, whether it is a liquor license or not, and if you saw a group of men who spoke in high pitched voices, who used limp wrist action, who walked high on the balls of their feet and as they walked they swished their hips and also their shoulders and if they were to move their hands in a dainty way, would that mean anything to you?

'A. No, sir.'

"Joseph Passalacqua, herein referred to as Joe, was a bartender on the occasions referred to, and he too denied that there was any essential difference between the gait of males and females regardless of whether a female wore a high or low shoe; that there was no difference in the movement of the hips or in the way men and women held drinks or cigarettes. He also denied that he saw any limp-wrist motions on the part of the males in the premises on the dates in question; heard no one speak in a high-pitched voice; saw no tongues protruding from the mouths of the males; stated that walking in the manner described by the agent is a characteristic of athletes; indeed, he walked that way because he was a former athlete. With respect to the interrogation which took place at the time of confrontation by the agents, Joe stated that, when questioned, he merely said 'I won't answer at this time.'

"He additionally denied hearing the agents discuss any of the apparent homosexuals on the date hereinbefore referred to, and stated that they might have said something to him but he did not hear them because he was 'concentrating on drinks.' He admitted on cross examination that the only time he recognized apparent homosexuals was in August of 1962 when several of these persons came into the premises, were holding hands and, as they seated, one wrapped his arm around the other. At that point he insisted that he evicted them.

"Clarence Hoover (the licensee), testifying in defense to the second charge, stated that the last person who was permitted to imbibe alcoholic beverages on December 16 left the said premises at 3 a.m. His explanation of the fact that the clock on the wall indicated that it was 3:15 was that he purposely set the clock fifteen minutes fast.

"With respect to the first charge, he denied that Jim entertained in any but the most usual way by singing standard songs. He could not conceive any double entendre or double meaning in such songs as 'The Baker's Daughter' and certainly he felt there was nothing immoral or improper.

"He did not observe any impropriety on the parts of Jim and Joe on the evening of December 8, nor did he witness at any time any congregation of males on one side of the bar as described by the agents. His only experience with homosexuals or apparent homosexuals occurred a long time ago in Los Angeles when he saw two males with heavy make-up on. His testimony was similar to that of Jim with respect to his opinion as to any alleged differences in habits and conduct of males and females. He too saw no difference in drinking methods of smoking habits, nor did he find any difference in their gait, in the movement of their hips or in the way they held their glasses. He too did not observe any males holding hands or calling each other with endearing terms, sticking out their tongues or rolling their eyes in the manner described hereinabove.

"At the time of confrontation on December 29, the agents questioned the licensee as follows: 'How long these homosexuals been hanging out here? So I says, I don't know who you mean. Who do you mean?.... You point out the people who are supposed to be homosexuals and I'll tell you how long they been hanging out here.' At that point Joe entered the room and the agent asked him the same question, and the licensee continued: 'So I said to Joe ... Don't try to answer that question because you don't--only be guessing. You don't know how to answer that question.' And further, 'You are asking this man questions. I said I'll answer the questions for you but I'd like to have my attorney present.... I don't think my people working for me should answer for me.'

"On cross examination the licensee reiterated the fact that he saw no such persons as described by the agents at any time. Nor does he see any difference in the mannerisms or conduct or characteristics and walk and drinking or smoking habits between males and females and, indeed, he did not observe any of the mannerisms as ascribed to these apparent homosexuals on the dates in question. He was asked the following question:

congregated in one section together on the dates in question, it would appear that the charges have been proved. It is true that these persons did not wear female garb, but female garb is not necessary for such a finding. Re Kaczka and Trobiano, Bulletin 1063, Item 1; Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2.

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge. To permit such persons to gather and congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Re Kaczka and Trobiano, supra. And it is no excuse that the licensee did not recognize these persons as apparent homosexuals. The situation here was so obvious in my judgment as to completely discredit the licensee's testimony in that respect. It requires only ordinary frankness to state that his professed inability to recognize these apparent homosexuals was insincere and ingenuine. It is clear as crystal that, if the agents' version is to be believed, as I do believe it, then they should have been recognized even in the darkness. As was observed by the Director in Re Simmons, Bulletin 1406, Item 2:

'I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman.'

'The licensee cannot avoid his responsibility by merely closing his eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises.' Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3.

"Finally, it would be appropriate to quote from the Commentaries of the Prophet Jeremiah:

'There is none so blind as he who will not see.'  
(Jeremiah: 20)

'A liquor license is a mere privilege. Paul v. Gloucester, 50 N.J.L. 585; Mazza v. Cavicchia, 15 N.J. 498. As the court said in Benedetti v. Trenton, 35 N.J. Super. 30, at p. 35:

'In the public interest, the right to prescribe the conditions under which intoxicants may be sold is practically limitless.'

"Judge Jayne, speaking for the court In re 17 Club, Inc., 26 N.J. Super. 43, at p. 52, said:

'The governmental power extensively to supervise the conduct of the liquor business and to confine the



conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support.'

And, as was pointed out in Re Polka Club Inc., Bulletin 1045, Item 6:

'Rigid enforcement of the regulations ... is essential to the preservation of decency and the protection of the public morals....'

"Considering all the facts adduced herein and the legal principles applicable thereto, I conclude that the licensee is guilty of this charge.

"With respect to the second charge, I believe the testimony of the agents and particularly the testimony of Agent S that he was permitted to consume alcoholic beverages after the closing hour as enjoined by the applicable ordinance. He testified that there were other patrons who were consuming and permitted to consume such beverages after 3 a.m. and, when he left the premises, he was met at 3:15 a.m., immediately outside the premises, by Agent G.

"The defense of the licensee is not convincing since he made no written memorandum of his activity on that morning as the agents did. I have observed the licensee on the stand and was not persuaded that credence should be given to his testimony in this regard. The local ordinance referred to in the second charge prohibits the sale, service or consumption of alcoholic beverages on licensed premises between 3 a.m. and 7 a.m., and provides that the licensed premises must be closed between said hours. When the ordinance set the time of closing at 3 a.m., it meant exactly what it said. Licensees are required to adhere strictly to the provisions of the local ordinance and to clear out the patrons and close the place on time. Patronage that is worthwhile will understand and will hold no grudge if told to leave at the closing hours. As the then Commissioner Burnett suggested in Re Four Hundred Social Club, Inc., Bulletin 242, Item 8: 'The rest of the customers will have to be herded out willy nilly.' The licensee should teach its customers the first lesson in parliamentary law - that a motion to adjourn is not debatable.

"After reviewing the evidence, the exhibits and the written arguments of counsel, I conclude that the Division has established the truth of both charges by a fair preponderance of the believable evidence, and I recommend that the licensee be found guilty of said charges.

"The licensee has a prior adjudicated record. Effective January 2, 1955, his license was suspended for five days by the local issuing authority. Since that charge is dissimilar to the charges herein and occurred more than five years ago, it should not be considered in fixing the penalty to be imposed herein.

"Although in recent comparable cases more severe penalties have been imposed, and similar penalty might well be warranted herein, in view of the penalty heretofore imposed by the then Director in the previous Conclusions and Order herein (Re Hoover, Bulletin 1474, Item 2), I further recommend that



an order be entered suspending the license for a period of forty days on Charge 1 and for an additional fifteen days on Charge 2, making a total suspension of fifty-five days."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings, the exhibits introduced into evidence at ~~the~~ <sup>this</sup> hearing ~~of this appeal~~, the written briefs submitted by counsel for the licensee and the Division at the conclusion of said hearing, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence, I shall enter an order as recommended.

No effective dates for the suspension may now be fixed in view of the order of the Appellate Division of the Superior Court dated July 31, 1962, staying the effect of the prior order entered herein pending the appeal herein (Hoover v. Division of Alcoholic Beverage Control, Docket No. A-1027-61) and in further view of the fact that jurisdiction herein has been retained by the Appellate Division of the Superior Court by order dated April 18, 1963.

Accordingly, it is, on this 18th day of June, 1963,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Parsippany-Troy Hills to Clarence Hoover, t/a Hoover's Tavern, for premises West Side of Tabor Road about 500 feet south of Maple Avenue, Parsippany-Troy Hills, be and the same is hereby suspended for fifty-five (55) days, the effective dates of which will not be fixed until the determination by the Appellate Division of the pending appeal, and remand to this Division.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

2. APPELLATE DECISIONS - WORLD LIQUORS, INC. v. HOWELL.

WORLD LIQUORS, INC.	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF HOWELL,	)	
Respondent.	)	

-----  
Edward M. Rothstein, Esq., Attorney for Appellant  
Elliot L. Katz, Esq., Attorney for Respondent  
Edwin J. Fox, Esq., Attorney for Objector Freehold Suburban  
Tavern Owners' Association  
Samuel Moskowitz, Esq., Attorney for Objector Monmouth County  
Retail Liquor Stores Association

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the unanimous action of respondent in denying an application for person-to-person and place-to-place transfer of plenary retail consumption license C-14 from

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1543

JANUARY 6, 1964

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2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - PRIOR SIMILAR AND DISSIMILAR RECORD - NO REMISSION FOR PLEA ENTERED AT HEARING - LICENSE SUSPENDED FOR 110 DAYS.

In the Matter of Disciplinary Proceedings against

JOCKEY CLUB, INC.  
t/a JOCKEY CLUB  
5-7-7 1/2-9 S. North Carolina Ave.  
Atlantic City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City.

-----  
Harry Castelbaum, Esq., Attorney for Licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

After partial hearing, licensee pleaded non vult to charges alleging that on November 10-11, 1962, it (1) permitted indecent entertainment (strip tease accompanied by suggestive movements and posturing), in violation of Rule 5 of State Regulation No. 20, and (2) permitted female entertainers to drink at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

Licensee has a previous record of suspension of license (1) by the Director for the balance of its term, effective January 5, 1959, for permitting apparent homosexuals and foul language on the licensed premises (Re Jockey Club, Inc., Bulletin 1259, Item 5), (2) by the municipal issuing authority for ten days, effective June 24, 1960, for permitting apparent homosexuals on the licensed premises, and (3) by the Director for seventy-five days, effective November 28, 1962, for permitting aggravated indecent entertainment and hostess activity on the licensed premises (Re Jockey Club, Inc., Bulletin 1488, Item 1).

The minimum suspension customarily imposed for a first offense as involved in the first charge is thirty days and for that in the second charge twenty days, or a total of fifty days. Re Jockey Club, Inc., Bulletin 1488, Item 1. However, where, as here, the offenses charged are second similar offenses within a period of five years, the minimum, in accordance with established policy, will be doubled to one hundred days, to which will be added ten days by reason of the two previous suspensions for dissimilar violation occurring within the past five years (Re Oliveri, Bulletin 1532, Item 3), making a total suspension of one hundred ten days. No remission will be granted for the plea entered after partial hearing. Re Ten Acres, Inc., Bulletin 1535, Item 7.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City to Jockey Club, Inc., t/a Jockey Club, for premises 5-7-7 1/2-9 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for one hundred ten (110) days, commencing at 7:00 a.m. Monday, November 25, 1963, and terminating at 7:00 a.m. Saturday, March 14, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

ANTHONY GEORGE CAPPUCCIO )  
t/a THE PADDOCK INN )  
24 South Warren St. )  
Trenton 8, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-177, issued by the City )  
Council of the City of Trenton. )

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Edward A. Costigan, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleads not guilty to a charge as follows:

'On March 22, 29, 30, April 19 and 20, 1963, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"The factual setting for the Division's case was developed through the testimony of two ABC agents. Acting upon a specific assignment to investigate alleged homosexual activities at the above licensed premises, they first entered the tavern on March 22, 1963, at about 9:15 p.m. During their stay, which was concluded at 10:45 p.m., they observed that there were twenty-eight patrons at the height of activity, of whom seven were females and twenty-one were males. Ten of the males particularly attracted their attention because they congregated in one area at the rear of the bar and had characteristics, similar actions, demeanor and behavior. These were described as follows: Some of them would touch the others on the face and hands very 'lightly, softly;'

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1543

JANUARY 6, 1964

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6. STATE LICENSES - NEW APPLICATION FILED.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City to Jockey Club, Inc., t/a Jockey Club, for premises 5-7-7 1/2-9 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for one hundred ten (110) days, commencing at 7:00 a.m. Monday, November 25, 1963, and terminating at 7:00 a.m. Saturday, March 14, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

ANTHONY GEORGE CAPPUCCIO )  
t/a THE PADDOCK INN )  
24 South Warren St. )  
Trenton 8, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-177, issued by the City )  
Council of the City of Trenton. )

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Edward A. Costigan, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleads not guilty to a charge as follows:

'On March 22, 29, 30, April 19 and 20, 1963, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"The factual setting for the Division's case was developed through the testimony of two ABC agents. Acting upon a specific assignment to investigate alleged homosexual activities at the above licensed premises, they first entered the tavern on March 22, 1963, at about 9:15 p.m. During their stay, which was concluded at 10:45 p.m., they observed that there were twenty-eight patrons at the height of activity, of whom seven were females and twenty-one were males. Ten of the males particularly attracted their attention because they congregated in one area at the rear of the bar and had characteristics, similar actions, demeanor and behavior. These were described as follows: Some of them would touch the others on the face and hands very 'lightly, softly;'

they looked at each other and fluttered their eyes as they spoke; those who were attached to another would run their fingers through the hair of their companion; they spoke in high, lispy tones but in a soft manner. As they walked, their gait was a decided effeminate gait; 'they walked on the balls of their feet and shifted from side to side in a swishy fashion.'

"They smoked their cigarettes in a dainty, effeminate manner; they used a limp wrist action when in conversation or even when sitting in a relaxed position with their elbow on the bar. In holding their drinks they extended their little fingers and held the glass very effeminately as they sipped the contents of the glass. Even in their play at the bowling machine they appeared to bowl in an effeminate manner, holding their cigarettes high as a female would. Based upon their actions, mannerisms and demeanor, it was the opinion of the agents that they appeared to be males who were impersonating females and 'I think they were fags or queers.'

"The agents returned to the licensed premises late in the evening of March 29th and stayed into the early morning of March 30, 1963. They made note of the fact that the licensee was also tending bar on this night; associated with him was another bartender known as Larry. At the height of the activity there were thirty patrons, of whom twenty-five were males and five females. Of the males, twenty attracted their attention because they manifested the same behavior as hereinabove described and also congregated in one group at the rear of the bar. The agent particularly noted on this night that they spoke in high-pitched, lispy tones, and as they walked to and from the juke box 'they swished their hips from side to side.' The agents also noted that a number of these were paired off in couples and were seated close to each other and looked into each other's eyes 'more effeminately and sang into each other's face, face to face, as a female would sing perhaps to a male.'

"On one occasion on this evening, a young patron came into the premises and apparently was suspected of being an ABC agent. One of the apparent homosexuals seated near one of the ABC agents was heard to say, 'I think that he's an ABC man', and another apparent homosexual replied, 'Oh, "F" him, I'm behaving myself.' One of the agents then commented to Larry (the bartender), 'I see that you have all the girls down at your end of the bar, but I wouldn't want to dance with that kind.' Replied Larry laughingly, 'Yes, I do.'

"A little later in the evening one of the agents asked the licensee, 'Where do all the fags come from?' to which the licensee answered, 'From here and from there.' The agent then asked when some real girls were going to come to the place, and the licensee assured him that he expected some real girls, 'not fags', on the following week.

"The last visit was made by these agents on the evening of April 19th extending into the early morning of April 20th. After the agents were in the premises for a while, it became quite obvious to them that they had been recognized as such agents because they were 'isolated' from the rest of the patrons who had been fore-warned of their presence. On this occasion there were twenty-four patrons at the height of activity, twenty of whom were males. Of this number seventeen of the males seated in the rear portion of the bar fitted the description of

apparent homosexuals as hereinabove described.

"After it became very clear that they had been recognized, the agents engaged in a conversation with the licensee and questioned him about the 'fags' in the rear portion of the bar. The licensee stated that he wasn't interested in what acts they committed outside the premises 'as long as they behaved themselves while in the premises.' The agent then advised him that, so long as these 'fags' came into the place, they wouldn't have regular girls come into his establishment. The licensee then stated that he didn't care about that as long as he had the business and they behaved themselves. When it was pointed out that those persons were definitely 'fags,' the agent testified that the licensee shouted, 'how do you know that they are fags? Can I tell positively that they are fags, and that if I can't I should keep my mouth shut--I should be quiet.'

"At 12:30 a.m. on April 30, 1963, agents followed the licensee to the exterior of the premises and identified themselves. In a discussion regarding the nature of the activity, the licensee stated that he was aware that the prior owner had a record of homosexual activity on these premises; that in fact, since he bought the license, he 'threw out' six of these apparent homosexuals who were 'acting up' and wouldn't allow them to come in. So far as the others were concerned, as long as they behaved themselves he permitted them to patronize the tavern. He also pleaded ignorance of the fact that he was not permitted to allow the congregation of apparent homosexuals as long as they behaved themselves.

"On cross examination it was developed that Agent D did not have any particular training in psychology or had taken any courses pertaining to homosexuality. However, he stated that he had been with the Division for four years; had participated in a number of investigations of alleged homosexual activity for this Division, and had had some experience even prior to becoming associated in his present capacity in observing apparent homosexuals.

"The agent admitted that these apparent homosexuals were on their best behavior and 'didn't flaunt their perversions in a loud manner.' He was asked to define what he meant by 'lispy' in describing the tone of voice in which these apparent homosexuals spoke. He defined it as follows: 'They use a lispy tone and that would be when they carry out the "S's" and words they are talking about in an effeminate manner. The only way to say it is like a very effeminate person would talk.' He also described the rolling of their eyes as follows: 'I said on some I saw their eyes roll and the fluttering of eyelashes in a very effeminate manner.'

"It should be noted that the testimony of ABC agent S on direct examination was, by stipulation of counsel, entirely corroborative of the testimony of Agent D. On cross examination he merely admitted that none of the apparent homosexuals had 'propositioned' him nor did he directly question them on the occasion of his visits to these premises.

"Testifying on behalf of the licensee, Hugh E. Langcaskey, a detective employed by the Police Department of Trenton, stated that he recalled the investigation resulting in the suspension of license of the former licensee of these premises for similar violation (Re Haje, Bulletin 1342, Item 1). After the present licensee took possession of these premises on March 12, 1963, this witness visited the said premises on one occasion and observed that there were three patrons in the tavern, all of whom were



known to him personally. He would also 'drop in to see who was in the place' occasionally on a Friday evening or a Saturday evening when he was working, and didn't observe any illegal activity. He particularly noted that on a Saturday evening, when there was a 'grand opening,' he found the place extremely crowded and the patronage consisted mostly of local businessmen. On cross examination he admitted that he was not present on the nights set forth in the charge herein or, if he did visit there, he was there for just a few minutes. He added that he was positively not in the premises on the night of April 19th or the early morning of April 20th. He was then asked with respect to the particular night on which the detective testified as to the large number of patrons that visited these premises in the following way:

'Q Then, my question is on that particular night did you see any persons in there who appeared to you to be homosexuals?

A I couldn't say on that night.

Q You couldn't say?

A I couldn't really say that night.'

"Anthony George Cappuccio (the licensee), testifying in defense of the charge herein, generally denied its essential allegations. More specifically, he stated that, when the ABC agents accused him of having 'a bunch of fags all the way down the line,' he replied, 'You'd better shut your mouth unless you can prove it.' He also asserted that, after he purchased this tavern from Mrs. Haje, he did his best to clean about sixteen or seventeen out of there and, if there are any more left in there, he doesn't know who they are. He insisted that he could not tell who was a female impersonator and that, if he tried to accuse them, they would probably sue him.

"On cross examination he stated that he had been engaged in the alcoholic beverage industry for about six months, and prior to that had been a butcher. He again vigorously denied that there were any so-called 'fags' in his premises and he insisted that, when he was accused of having these apparent homosexuals, he told the agents that they had better prove it by identifying them. However, those persons who were pointed out by the agents were, in his opinion, normal people and did not fit the description of apparent homosexuals. He was then asked whether he would conclude that persons possessed of the characteristics, mannerisms and behavior described by the ABC agents might 'possibly be homosexuals' and he answered, 'Well, who am I to prove that? After all I hold a cigarette this way. I flick it this way. I'm one too?' The witness insisted that in his entire lifetime he came into contact with only one homosexual. Finally, the witness denied that the persons fitting the descriptions given by the agents ever came into his tavern on the nights in question.

"Alexander S. Engi, testifying on behalf of the licensee, stated that he frequents the licensed premises every night and did not see any apparent homosexuals on the premises.

"In rebuttal testimony, both agents stated that the licensee informed them that, after he purchased these premises and took over the license, he threw out of the premises six or seven of the homosexuals who were 'acting up.' The licensee also informed them that he was well aware of the fact that Mrs. Haje's license had been suspended for permitting the congregation of homosexuals

and that he was trying to do the best that he could to remedy the situation; he felt, however, that, as long as they were behaving themselves, they 'couldn't help themselves being what they were.'

"I have detailed much of the testimony of both the witnesses for the Division and of the licensee in order to develop an objective perspective of the facts upon which the charge herein is based. My careful analysis and evaluation of the testimony, together with my observation of the demeanor of the witnesses as they testified at the hearing, lead me to the considered conviction that the version as presented by the agents of what transpired on the dates in question is a credible, forthright and true version.

"On the contrary, I was singularly unimpressed with the credibility and the demeanor of the licensee. He operates under the mistaken impression that the congregation of apparent homosexuals is perfectly permissible as long as they don't commit any overt acts or cause a disturbance. The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. The licensee at one point testified that he has only met one homosexual in his entire life. Yet, on the other hand, he asserts that, after he purchased the licensed premises from Mrs. Haje, he 'cleaned out' at least sixteen or seventeen homosexuals who were habitués of these premises.

"The licensee knew that these premises had had a reputation for permitting the congregation of apparent homosexuals. This was a poorly kept secret. It thus became the obligation and prime responsibility of the licensee to see to it that this type of violation was not repeated on these premises after he assumed operation thereof. But if he was going to continue to operate upon the premise that these apparent homosexuals could not be evicted unless there was positive proof that they were homosexuals, then, of course, this condition would never be changed.

"The licensee has reiterated that he had no way of proving that these apparent homosexuals were in fact homosexuals and admitted that he stated to the agents that, unless they could prove the fact, he should not be charged with such offense. However, if the description of the manner, conduct and characteristics of these apparent homosexuals as given by the agents is accurate, then it was the duty of the licensee to recognize that these persons were apparent homosexuals, as charged. The testimony also is persuasive that the bartender employed by the licensee was fully aware of the fact that these large numbers of persons congregating in the rear portion of the bar and acting in the manner as described hereinabove were apparent homosexuals. The conversation which I have set forth hereinabove buttresses that conclusion. I am equally persuaded that the licensee was fully aware of their presence and, in the interest of doing more business, permitted that condition to exist and to continue.

"In a letter to the Director, supplementing the oral summation at the conclusion of the hearing, counsel for the licensee advocates that the licensee has not been given enough time to 'completely convert the type of trade at this well known location;' that more time should have been given to the licensee or some warning should have been given to him before he was actually charged as hereinabove; 'that at least two or three months should be allowed a new licensee under these circumstances to convert the previous type of business before charges are made against him for violations which he has not caused.' This reasoning must, of course, be summarily rejected. As was pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6:

'Rigid enforcement of the regulations ... is essential to the preservation of decency and the protection of the public morals ....'

"Since the licensee was well aware of the conditions that existed, he should have acted with determination, firmness and promptness and not have suffered the condition to continue. As Justice Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, at p. 52, said:

'The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support.'

"I am further convinced that the licensee was fully aware of the conduct, mannerisms and behavior of apparent homosexuals -- otherwise, he would not have excluded the sixteen or seventeen of the more flagrant violators from his premises, as he testified. It is also clear that he should have been able to recognize that the large numbers of persons congregated at the rear of the bar were apparent homosexuals, as described. As the court stated in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957):

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"The mannerisms and behavior of the individuals described by the agents clearly come within the purview of that definition. While it is true that these individuals did not wear female garb, such garb is not necessary for the finding that they were apparent homosexuals. Re Kaczka and Trobiano, Bulletin 1063, Item 1; Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2.

Item 1: "As the Director stated in Re Hoover, Bulletin 1521,

'Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge.'

To permit such persons to congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected.

"After reviewing the evidence, the exhibits and the oral and written arguments of counsel, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence. I recommend that the licensee be found guilty of the said charge.

"Licensee has no prior adjudicated record. I further recommend that, in view of the relatively large number of apparent homosexuals without evidence of any overt acts of indecency, an order be entered suspending the license for a period of sixty days. Re Rutgers Cocktail Bar, A Corp., supra; Re Kobble, Bulletin 1529, Item 2; Re Ashen, Bulletin 1495, Item 7."

Pursuant to Rule 6 of State Regulation No. 16, the attorney for the licensee filed written exceptions to the Hearer's Report, supported by written arguments thereto.

Having carefully considered all the evidence, argument of the attorneys, the Hearer's Report and the written exceptions and arguments filed by the attorney for the licensee, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton to Anthony George Cappuccio, t/a The Paddock Inn, for premises 24 South Warren Street, Trenton, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, November 25, 1963, and terminating at 2:00 a.m. Friday, January 24, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1580

September 24, 1964

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10. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library

I shall suspend licensee's license for a period of ninety days.

The license herein was transferred to Ralph Lemongelli (husband of Anna Lemongelli) on May 26, 1964.

Accordingly, it is, on this 3rd day of August 1964,

ORDERED that Plenary Retail Consumption License C-771, issued for the 1964-65 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ralph Lemongelli, t/a Club Carmen, for premises 28 Columbia Street, Newark, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Wednesday, August 12, 1964, and terminating at 2 a.m. Tuesday, November 10, 1964.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - SERVING ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
STEVE N. LORDI	)	
t/a SKIPPY'S HIDEAWAY	)	CONCLUSIONS
97-99 Edison Place	)	AND ORDER
Newark, N. J.	)	
Holder of Plenary Retail Consumption License C-617, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	)	

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Louis R. Cerefice, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on October 12-13, 20, 25-26 and November 1-2, 1963, he (1) conducted the licensed place of business as a nuisance, viz., permitting apparent male homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) served alcoholic beverages other than ordered, in violation of Rule 23 of State Regulation No. 20.

Reports of investigation disclose that, on the dates mentioned, the licensed premises was patronized by large numbers of apparent male homosexuals, i.e., on October 12-13 95% of a total male patronage of 110, on October 20 90% of a total of 150, on October 25-26 75% of a total of 75, and on November 1-2 90% of a total of 75; total female patronage on these dates ranging from one to four.

Additionally, the reports disclose that customarily orders for mixed drinks of a name brand whiskey were filled by using a cheaper brand.

Absent prior record, on the basis of the facts appearing (simple congregation of a relatively large number of apparent

homosexuals), the license will be suspended on the first charge for sixty days (Re Murphy's Tavern, Inc., Bulletin 1563, Item 4), and on the second charge for fifteen days (Re Robert-Alan Hotel, Inc., Bulletin 1532, Item 4), or a total of seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days.

Accordingly, it is, on this 27th day of July, 1964,

ORDERED that Plenary Retail Consumption License C-617, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Steve N. Lordi, t/a Skippy's hideaway, for premises 97-99 Edison Place, Newark, be and the same is hereby suspended for seventy (70) days, commencing at 2 a.m. Monday, August 3, 1964, and terminating at 2 a.m. Monday, October 12, 1964.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

SAMUEL M. TARLOWE )  
912-920 Bergen Avenue )  
Jersey City, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-175, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Jersey City. )

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Russell H. Hulsizer, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 27, 1964, he sold a bottle of beer to each of two minors, fifteen and sixteen years of age respectively, in violation of Rule 1 of State Regulation No. 20.

Although licensee has no previous record, it appears that he owns 98% of the stock of Green Star Inc., holder of a plenary retail consumption license for premises 108-118 Chestnut Street, Roselle, the license of which was suspended by the local issuing authority for eight days effective July 3, 1960, for sale to a minor, and again said license was suspended for ten days, by the Director, effective June 15, 1964, for possessing a pin ball machine on the licensed premises (Re Green Star, Inc., Bulletin 1567, Item 10).

I shall suspend the license for thirty-five days for sale of alcoholic beverages to the two minors, fifteen and sixteen years of age respectively (Re Loveland & Anderson, Bulletin 1127, Item 2), to which will be added ten days for the similar violation occurring within five years (Re Freedman, Bulletin 1436, Item 4), plus an additional five days for the dissimilar violation occurring within five years (Re Vamos, Bulletin 1541, Item 5), making a total of fifty days. Five days

✓

MR. ZEMEL

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1588

November 18, 1964

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New Jersey State Library



3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
 LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
 Proceedings against

K & K Corp.  
 t/a Val's Bar  
 114 S. New York Ave.  
 Atlantic City, N. J.

CONCLUSIONS  
 AND  
 ORDER

Holder of Plenary Retail Consumption  
 License C-76, issued by the Board of  
 Commissioners of the City of  
 Atlantic City

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 Albert J. Perrella, Esq., Attorney for Licensee  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
 Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 21, June 27-28 and July 18, 1964, it conducted the licensed place of business as a nuisance, viz., permitting apparent male homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question, the licensed premises was patronized by large numbers of apparent male homosexuals, i.e., on June 21 and June 27-28 forty out of a total of fifty male patrons and on July 18 approximately 90% of a total male patronage of one hundred twenty-five.

Licensee has a previous record of suspension of license by the municipal issuing authority for twenty-five days effective February 8, 1953, for sale to minors. In addition, the license of V. M. & S. Inc., t/a Famous Bar, 501 Pacific Avenue, Atlantic City, of which corporation Valentine and Mildred Kusek (principal stockholders of K & K Corp.) were then officers, was suspended by the municipal issuing authority for ten days effective April 30, 1956, for sale to a minor and to an intoxicated person.

The prior record of suspensions of license for dissimilar violation occurring more than five years ago disregarded, on the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals) the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Murphy's Tavern, Inc., Bulletin 1563, Item 4.

Accordingly, it is, on this 29th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the City of Atlantic City to K & K Corp., t/a Val's Bar, for premises 114 South New York Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m. Tuesday, October 6, 1964, and terminating at 7:00 a.m. Monday, November 30, 1964.

JOSEPH P. LORDI  
 DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1625

July 29, 1965

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7. DISCIPLINARY PROCEEDINGS (Newark) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library

2. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
FOUL LANGUAGE - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary  
Proceedings against

JO-STEM CORPORATION

t/a RON-DAY-VOO

3905 Federal Street

Pennsauken Township, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption

License C-25, issued by the Township

Committee of the Township of Pennsauken.

David Novack, Esq., Attorney for Licensee.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleads not guilty to the following charges:

"1. On Tuesday night January 19, Wednesday night January 20 and early Thursday morning January 21, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On Wednesday night January 20 and early Thursday morning January 21, 1965, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The factual setting for the Division's case was developed through the testimony of two ABC agents. Acting upon a specific assignment to investigate the alleged homosexual activities at the above licensed premises, they visited the said premises on the evenings of January 19 and January 20, 1965 (the last visit terminated at about 1:50 a.m. on January 21, 1965).

With respect to their visit to these premises on Tuesday evening, January 19, 1965, they entered the premises at about 10:45 p.m. and seated themselves at the bar. Robert Stemmer (the son of the principal officers of the corporate licensee) was then employed as a bartender and was engaged in serving seven male patrons seated together and conversing at the far end of the bar.

Three of these individuals attracted the attention of the agents because of certain peculiar characteristics reflected in their mannerisms: they were holding "their glasses like females, held their cigarettes like females, pinky extended from the glass like females would." They spoke in high-pitched voices and "when they would talk they would put their hands on each other short times, reach out and touch them on the shoulder." They also would raise their eyeballs, roll their eyes in conversation, and from their actions and mannerisms appeared to be male homosexuals.

The conversation overheard by these agents, which took place also within the immediate hearing of the bartender who was "directly in front of these people", consisted of dissertations about different dates and sexual adventures with males. One of the men rejoiced about his particular perverted sexual experiences with males, and several of the other participants delineated their own similar experiences.

Shortly thereafter another patron came in to the tavern, "bouncing in lightly, walking on the balls of his feet, swishing and swaying, as a woman would" and joined the conversation. He was dressed in tight chino pants, with low cut shoes, and his hair was combed upward "somewhat like an up-sweep that women wear." He appeared to be a male impersonating a female, an apparent homosexual. After engaging in conversation with these afore-described patrons, he kissed one of them on the cheek, put his arm around him and then departed. As he departed he informed the group, in the presence of Stemmer (the bartender) that he had to keep a date with "a guy this night who was real handsome, what a man he was, he could really satisfy him."

The agents returned at 10:45 p.m. on the evening of January 20 and immediately seated themselves at the bar. A man, who later was identified as Ernest F. Barnett, was working as a bartender and shortly thereafter he was relieved by Stemmer who continued to work until the agents departed.

At this time there were approximately twenty-five males and two female patrons in the tavern. The females were seated with two male companions at a table near the rear of the bar. Seven patrons, seated at the rear end of the bar in the same location where the other patrons hereinabove described were seated on the night before, attracted the attention of these agents because of their peculiar mannerisms. They spoke in high-pitched voices, held their glasses and cigarettes in the same manner described hereinabove, and they "walked on the balls of their feet, they walked -- they swished and swayed, throwing their hips from side to side.... When they conversed they put their hands on each other, rested their hands on thighs, on the shoulders, around necks. They used endearing terms, 'Honey' and things like that." One of these persons, a male later identified as D---, was heavily made up, with much powder on his face and mascara, and wore red shirt, very tight chino-type trousers. These patrons appeared to be males impersonating females, and male homosexuals, and were later specifically identified as being Messrs. F---, M---, and D---. The agent who, as stated, was seated close to this group, detailed the conversation which took place among these apparent homosexuals, in which the bartender (Stemmer) participated. Much of the conversation was quite audible and could obviously be heard by the other patrons in the establishment. Some of this conversation took the form of autobiographical confessions of the genesis and motivations for their homosexual behavior. D--- also boasted that two of his brothers were also homosexuals. They delighted in

describing their particular perverted sexual activities with other males. In the course of these narratives of their said perverted sexual activities, these alleged homosexuals spoke in loud voices and used filthy, obscene and offensive language almost constantly. No purpose would be served in repeating these words except to state that they were disgusting, vile and offensive and were spoken loudly so that they could be and were clearly audible to all of the patrons in the premises.

When Robert Stemmer (the bartender) was first observed at approximately 12:30 a.m. on January 21, he wore face powder and a considerable amount of facial make-up, including mascara on his eyebrows. He "bounced in walking on the balls of his feet, really swishing and swaying" and appeared to the agents to be a male homosexual. Agent J commented on the appearance of Stemmer with Barnett (the other bartender), and Barnett readily described him, "Yes, he is a real gay."

Shortly thereafter the agents identified themselves and summoned the bartenders and some of the alleged male homosexuals to the kitchen adjoining the barroom. Barnett readily admitted that the group of patrons referred to were all homosexuals with the exception of M---. However, he added "But they don't get too far out of line. Many homosexuals, gay people, as he put it, come into the place."

Stemmer then entered the kitchen and also admitted that those patrons were homosexuals. He acknowledged that he looked like a homosexual but he added, "I act that way, I look that way, I talk that way. Many people think I am gay but I am not."

On cross examination Agent J admitted that some homosexuals may be married and even have children, but nevertheless pursue homosexual activities. He reiterated that this group of apparent homosexuals carried on a loud conversation, replete with filthy and offensive language throughout the evening of January 20 and the early morning of January 21.

The concordant testimony of Agent C was, by stipulation, corroborative of the testimony of Agent J. He added that C--- (one of the patrons) explained that, while he was not ashamed of being "gay", he felt that it was better to dress as a straight male and save embarrassment to his family. He also added that Barnett insisted that, while these persons were "gay" and many such persons frequented the premises, they "did not bother anybody."

Ernest F. Barnett (the bartender employed by the corporate licensee), testifying on its behalf, stated that he had been employed at these premises for about four or five months prior thereto, and that he participated "off and on" in the conversation of the patrons congregated at the rear of the bar; "if somebody says something I usually say something back." He redounded the conversation that took place in the kitchen after the confrontation by the agents, and stated that only D--- admitted that he was a male homosexual.

He was then asked whether he had heard any cursing or obscene or foul language. His answer: "There might have been some. If it gets out of control, if I think it would be heard on the other side of the bar, somebody screaming and yelling, I will control it and tell them to quiet down."

John L. Stemmer, Sr. testified that he is one of the principal stockholders of the corporate licensee, and was present on the evening of January 19. He was asked whether he observed any impropriety on the part of any of the patrons, and his reply was "No more than any other time", and "I didn't hear any loud talk or anything no more than I would any other time going on." He then stated that, when the agents summoned the bartenders and this group of patrons into the kitchen, he asked the two bartenders what was happening. However, he did not participate in the conversation with the agents, make any inquiries of them, nor did he seek to explain any of the activities to them. He stoutly denied that his son is "queer;" "they did say this and say that but that ain't the thing; got to prove these things, you know." He explained that the reason his son puts a lot of powder on his face is that he has a very heavy beard but, "as far as mascara, that is out." I then asked him why, as a principal stockholder, he didn't concern himself with the interrogation that was taking place in the kitchen. He merely stated that "I didn't both to question them."

Mrs. Agnes Stemmer (a principal stockholder of the corporate licensee with her husband) also vigorously denied that her son Robert is a homosexual, and explained that he uses powder on his face because he has a heavy beard.

I have detailed much of the testimony of both the witnesses for the Division and for the licensee in order to develop an objective perspective of the facts upon which the charges herein are based. My careful analysis and evaluation of all of the testimony, together with my observation of the demeanor of the witnesses as they testified at this hearing, lead me to the considered conviction that these charges have been amply supported by the credible and forthright testimony of the agents. I am also persuaded that much of their testimony has been corroborated by the direct admissions of Barnett. His attitude, which appears to reflect the attitude of the principal stockholders herein, is that, so long as these apparent homosexuals who congregate at these premises do not create a disturbance, their presence is perfectly permissible. This reasoning has also been advocated in the memorandum submitted by counsel for the licensee wherein he states that "I know of no provision in the Law which makes such conduct a crime nor am I aware of any provision in the rules or regulations of the Division of Alcoholic Beverage Control which makes it unlawful to serve beverages to such an individual or individuals. There is no testimony that these people annoyed any others. The Inspector, apparently, joined in some conversations with them."

Counsel for the licensee argues that his conception of a male homosexual is a man who "dressed as a woman and acted as a woman." Female garb is not necessary for such a finding. Re Rutgers Cocktail Bar, a corp., Bulletin 1133, Item 2; Re Cappuccio, Bulletin 1543, Item 3. Here the testimony established without doubt that these males in question, by their actions, mannerisms and demeanor, were males impersonating females, and were persons "who appeared to be homosexuals."

As the court pointed out in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957):

"If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise,

demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient."

In the matter sub judice, we are fortified with the inculpatory admissions of several of these patrons.

The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been consistently held that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of Regulation No. 20. As was stated in Re Hoover, Bulletin 1521, Item 1:

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge."

See also Carelis v. Division of Alcoholic Beverage Control, Bulletin 1393, Item 2 (aff'd by Appellate Division on December 21, 1961, not officially reported; reprinted in Bulletin 1430, Item 1); also Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App. Div. 1961), reprinted in Bulletin 1395, Item 3, wherein the court stated:

"In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405 (App. Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951)."

One further comment with respect thereto: There has been ample testimony that the conversations consisted of a profusion of filthy, obscene and disgusting language spoken quite audibly so that they were obviously heard by the other patrons. The presence of this large group of apparent homosexuals and the loud conversation must have had an unfortunate reaction upon the other patrons. The public is entitled to protection from these sordid activities. To permit such persons to congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practice. In addition, members of the public frequenting these premises, by being exposed to these conditions may well be adversely affected. In the light of



such congregation and the language used, it is futile to suggest, as counsel stated, that, so long as other patrons are not annoyed, these activities may be condoned. The proof in this case argues forcefully to the contrary.

Counsel also argues that, so long as these persons conduct themselves in a proper manner, having due regard for the rights of others, the licensee is obligated to serve them. He also states that a bartender was not "intended to be an eavesdropper and censor of the conversations of patrons in a bar.... It is certainly common knowledge that certain individuals are given to the use of various forms of expressions which may not appeal to persons of finer upbringing."

As I concluded from the testimony herein, the fact is that the offensive language used by these patrons did disturb the peace of the other patrons, even though none of them made any direct or formal complaint to the management. There is, indeed, no duty devolving upon the other innocent patrons to make such complaints to the management. Furthermore, licensed premises are private property, and offensive persons may be prohibited from congregating on these premises. It is clearly the obligation of a licensee to prohibit the attendance of persons of the kind in question on liquor licensed premises, and any claimed inability to prevent this type of patronage is rejected in Re Bader, Bulletin 1073, Item 4, wherein it is stated:

"In any event it is simple common sense that a licensee is not helpless to rid himself of undesirable patrons; he is master in his own house if he sincerely wishes so to be. This principle has been referred to and publicized in the early days of this Division. Commissioner Burnett, in Re Dorsey, Bulletin 226, Item 11, quoted from the opinion of Judge, afterwards Justice, Fort, in State v. Lynch, 23 N.J.L.J. 45, wherein he said:

'A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor.'

"Decisions of this Division to the same effect are Re Rollka, Bulletin 142, Item 4, Re Plaza Hotel-O'Leary, Bulletin 188, Item 9, and Re Griffin, Bulletin 200, Item 7.

"A similar contention that homosexuals cannot be barred from licensed premises has recently been rejected. Re Kaczka & Trobiano, Bulletin 1063, Item 1."

In answer to the assertion that a bartender is not intended to be an eavesdropper and censor of tavern language, this challenge was met in Re Lafayette Bar, Inc., Bulletin 1282, Item 6, wherein the Director stated:

"Defendant's attorneys submitted a letter in which they contend, by way of mitigation of the the penalty to be imposed herein, 'that patrons served by our client are not genteel ones, and their own particular mores are a fact of life that must be recognized. The language of this kind of patron



might not be appropriate in a more 'exclusive' bar, but generally it is of the type that these patrons are accustomed to, and to them it is not offensive.

"Sordid and filthy language and conduct in and upon licensed premises cannot be condoned or ignored because of the aforesaid alleged mitigating circumstances, for, as Judge Jayne said 'Experience has firmly established that taverns where wine, men, women and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession.' McFadden's Lounge, Inc. v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61."

After reviewing the evidence herein and the written arguments of counsel in summation, I conclude that the Division has established the truth of the charges by a fair preponderance of the believable evidence. I therefore recommend that the licensee be found guilty of such charges.

The licensee has no prior adjudicated record. The attorney for the licensee argues that, in view of the past record of the licensee, the worst penalty that should be imposed is a warning that the "licensee comply with whatever mandate the Division deems is proper in avoiding any repetition of any impropriety which may be found by the Division", adding that he is confident that his client will comply with the ruling. In this connection it should be noted that on March 18, 1964 the licensee was sent a warning letter with respect to permitting "fairies" and alleged homosexuals on his premises, and by letter dated April 3, 1964 the licensee acknowledged receipt of such warning.

The established minimum penalty for an unaggravated first offense involving congregation of a relatively small number of apparent homosexuals, as alleged in Charge 1, is suspension of the license for forty days. Re 32 Club, Inc., Bulletin 1444, Item 3; Re Club Delite, Inc., Bulletin 1495, Item 6; Re Cambar, Inc., Bulletin 1620, Item 7. I further recommend that, in addition thereto, its license should be suspended for an additional ten days on Charge 2 (Re Lafayette Bar, Inc., Bulletin 1603, Item 7), making a total suspension of fifty days.

#### Conclusions and Order

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the oral summation of counsel and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of May 1965,

ORDERED that Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Pennsauken to Jo-Stem Corporation, t/a Ron-Day-Voo, for premises 3905 Federal Street, Pennsauken Township, be and the same is hereby suspended for the balance of its term, viz., until midnight

June 30, 1965, commencing at 2 a.m. Monday, May 24, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Tuesday, July 13, 1965.

JOSEPH P. LORDI  
DIRECTOR

3. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp.#260	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-117,	)	ON PETITION
issued by the Board of Commissioners	)	SUPPLEMENTAL
of the City of Passaic to	)	ORDER
	)	
STEIN'S CAFE, INC.	)	
t/a Stein's Cafe	)	
197 Monroe Street	)	
Passaic, N. J.	)	

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Joseph M. Keegan, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On March 17, 1965, an order was entered temporarily staying statutory automatic suspension of license of licensee-petitioner pending determination of disciplinary proceedings against it.

It now appears from supplemental petition and the records of the Division that in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for four days commencing at 3:00 a.m. May 9, 1965, after confessional plea to a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. It appearing that the municipal suspension has been served, I shall lift the automatic suspension. Re Jackson Liquors, Inc., Bulletin 1558, Item 9.

Accordingly, it is, on this 19th day of May, 1965,

ORDERED that the statutory automatic suspension of said license C-117 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1630

August 20, 1965

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ORDERED that my order entered on June 29, 1964, extending the term of appellant's license pending determination of the appeal herein, be and the same is hereby vacated.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Charmac, Inc.  
7-9 N. Straight Street  
Paterson, New Jersey

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption  
License C-47, issued by the Board of  
Alcoholic Beverage Control for the  
City of Paterson.

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Licensee, by Joseph Borrelli, President, Pro se  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 8 and 14-15, 1965, it conducted the licensed place of business as a nuisance, viz., permitting apparent male and female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question the licensed premises was patronized by large numbers of apparent male and female homosexuals, i.e., on May 8 by four female and thirteen male homosexuals out of a total patronage of twenty-three, and on May 14-15 by eight female and sixty male homosexuals out of a total patronage of seventy.

Absent prior record, on the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals), the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re K & K Corp., Bulletin 1588, Item 3.

Accordingly, it is, on this 17th day of June 1965,

ORDERED that Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charmac, Inc., for premises 7-9 N. Straight Street, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 3 a.m. Thursday, June 24, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Wednesday, August 18, 1965.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1637

September 28, 1965

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New Jersey State Library

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1637

September 28, 1965

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 120 DAYS, LESS  
5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

CHARMAC, INC. )  
7-9 N. Straight Street )  
Paterson, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-47, issued by the Board of )  
Alcoholic Beverage Control for the )  
City of Paterson. )

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Harry Castelbaum, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge as follows:

"On June 9 and 23, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that agents visited the licensed premises on June 9 and 23, 1965. On the first visit they observed thirteen male patrons, four of whom appeared to be homosexuals. Two of these apparent homosexuals were dancing with each other. On the second visit the agents observed a total of twenty-five male patrons, all of whom appeared to be homosexuals in their mannerisms and appearance. On this occasion they also observed two apparent homosexuals dancing with each other, throwing their arms in the air and rotating the lower portions of their bodies in a feminine manner.

Licensee has a previous record of suspension of license by the Director for fifty-five days effective June 24, 1965, for similar violation, said suspension being presently in effect, terminating at 3 a.m. Wednesday, August 18, 1965, Re Charmac, Inc., Bulletin 1630, Item 2.

The prior record of suspension for similar violation within the past five years considered, the usual penalty of suspension for sixty days for a first offense of this kind (Re Charmac, Inc., supra) will be doubled and the license will be

suspended for one hundred twenty days, with remission of five days for the plea entered, leaving a net suspension of one hundred fifteen days, to take effect at the expiration of the present suspension period. Cf. Re Markowitz, Bulletin 1538, Item 1; Re Club Tequila, Inc., Bulletin 1557, Item 1.

In addition, the licensee is pointedly warned that a future similar violation may well result in outright revocation of the license.

Accordingly, it is, on this 11th day of August 1965,

ORDERED that Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charmac, Inc., for premises 7-9 N. Straight Street, Paterson, be and the same is hereby suspended for one hundred fifteen (115) days, commencing at 3 a.m. Wednesday, August 18, 1965, and terminating at 3 a.m. Saturday, December 11, 1965.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - CRIMINALLY DISQUALIFIED EMPLOYEES - REFUSAL TO SUBMIT TO FINGERPRINTING - LICENSE SUSPENDED FOR 75 DAYS.

CANCELLATION PROCEEDINGS - STOCKHOLDER CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - ORDER DISCHARGING ORDER TO SHOW CAUSE ON PROOF OF CORRECTION.

In the Matter of Disciplinary  
Proceedings against

FANTACO, INC.  
t/a DIAMOND SHO BAR  
35-37 N. Arkansas Avenue  
Atlantic City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-143 for the 1964-65 licensing  
period and C-97 for the 1965-66  
licensing period, issued by the Board  
of Commissioners of the City of  
Atlantic City.

Mathews & Sitzler, Esqs., by John O. Sitzler, Jr., Esq., Attorneys  
for Licensee.

David S. Piltzer, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

"1. In your application dated June 11, 1964, filed with the Board of Commissioners of the City of Atlantic City, upon which you obtained your current plenary retail consumption license, in answer to Question No. 22 you falsely listed Americo Bucalo, Charles Mason and Josephine Pestritto as the holders of all of your issued and outstanding stock and, in answer to Question No. 23, you falsely stated that no one other than said stockholders had any beneficial interest, directly or indirectly, in said stock, whereas in truth and fact Frank Fantasia

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1637

September 28, 1965

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New Jersey State Library



## 3. APPELLATE DECISIONS - C &amp; S TAVERN CORP. v. NEWARK.

C & S TAVERN CORP., t/a  
JACK'S STAR BAR,

Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF THE CITY  
OF NEWARK,

Respondent.

ON APPEAL  
CONCLUSIONS  
AND ORDER

Louis R. Cerefice, Esq., Attorney for Appellant.  
Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney  
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The appellant C & S Tavern Corp., t/a Jack's Star Bar, the holder of Plenary Retail Consumption License C-143 for premises 24 Tichenor Street, Newark, was found guilty by the respondent (hereinafter Board) in disciplinary proceedings of charges alleging that it allowed, permitted and suffered a brawl, act of violence and disturbance on its licensed premises and conducted its place of business as a nuisance, in violation of Rule 5 of State Regulation No. 20, and its license was suspended for a period of thirty days effective February 22, 1965,

It filed this appeal challenging such action, and an order was entered on February 17, 1965 staying respondent's order of suspension until the further order of the Director. R.S. 33:1-31.

In its petition of appeal appellant alleges that the Board's action was erroneous for reasons which may be summarized as follows: (1) the verdict was contrary to the clear weight of the evidence; it was based on "meager, unclear, contradictory and weak" evidence; (2) it was unreasonable and unlawful; (3) appellant exercised "every possible precaution and did everything possible to prevent the violation charged;" (4) The Board refused to grant a motion for dismissal based upon the ground that the Board had failed to prove a prima facie case; (5) the penalty imposed was "harsh; excessive and unduly severe."

The Board filed an answer generally denying the substance of allegations in the petition. It further asserts that the decision was based upon the factual testimony from which it "in its sound discretion, concluded that such action and the penalty imposed were substantiated."

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted in accordance with notice prescribed by Rule 8 of State Regulation No. 15, and was supplemented at this

hearing by testimony of witnesses produced on behalf of both the appellant and the Board.

In support of the Board's case it produced Charles Person, Jr., who gave the following account: On the evening of Sunday, August 2, 1964, he visited several taverns and consumed alcoholic beverages. Around midnight he entered the licensed premises of the corporate appellant accompanied by his girl friend Miss Brenda Parham. As soon as she was seated at the bar he left the premises and visited a nearby tavern where he consumed several beers.

Within a short time thereafter he returned to the appellant's premises and stood at the bar behind his friend. This bar contained about forty seats and there were at that time somewhere between seventy-five and eighty patrons present. His girl friend was drinking beer, but Person did not order any drinks. While he was standing there a man, whom he described as a Puerto Rican, came up behind his girl friend and put his arms around her waist. She then told him, "Go leave me off, don't bother me." Person told this man to leave her alone; that she was his girl friend, whereupon this man immediately turned and punched him in the eye with his fist. He fell to the floor and he noted that one of the bartenders jumped over the bar; the next thing he knew, he had been dragged outside on the sidewalk. He further admitted that there was no argument or shouting or quarrel between the assailant and himself, and that in fact, after he was struck, the man came to his side and told him, "I'm sorry, in fact, I done that." The police arrived shortly thereafter and he was taken by police car to the hospital.

Brenda Parham testified as follows: She accompanied Person to the tavern on the night in question and seated herself at the bar. Person immediately thereafter left the tavern and returned within fifteen or twenty minutes.. Upon re-entering the tavern he stood behind her because the bar was crowded and no seats were available. He did not order nor was he served any drinks at that time.

A Puerto Rican man came up to her and put his arms around her, and Person said, "why you put your hands on the lady ... and then, all of a sudden, he struck Charlie [Person] ...." She denied that there was any arguing or quarreling and that the whole thing happened spontaneously, "very fast."

It seems that, after Person was hit, she grabbed the shirt of the assailant and tore part of it. The aggressor ran out of the Tavern immediately after this assault. She noted that a bartender, whom she describes as a Spanish bartender, jumped over the bar immediately and, with the assistance of several other patrons, dragged Person out of the premises and placed him on the sidewalk. She immediately left the premises; saw that he was bleeding; returned to the premises and asked Bernard Rausch (an officer of the corporate appellant, who was also working as a bartender at that time) for a wet towel. He immediately gave her a wet towel and ice, and she returned to Person. She then sought to make a telephone call to the police, but saw that the telephone booth in the tavern was then occupied, whereupon she went to a nearby telephone and summoned the police.

On cross examination she recalled that Person, upon observing that his assailant had placed his arms around her waist, said, "Lay off, that's my girl friend .... So they said two or three words in Spanish, and then he hit Charlie and thats all."

She added that, when police took Person to the medical center, they told him he was drunk.

Detective Anthony Bongiovanni, of the Newark Police Department, testified at the hearing before the Board to the following effect: He undertook an investigation of this incident and questioned Rausch. Rausch stated that he did not call the police, nor did he have any knowledge of any incident that occurred on the premises. He insisted that, if there was any incident or disturbance that occurred, it was outside of the tavern. However, he admitted that Person had been in the tavern that evening; that he ordered his bartenders not to serve him because he was intoxicated; that in fact he was not served any beverages at that time.

It should be noted that, at this plenary hearing before me, Person and Miss Parham were both called by the attorney for the appellant in its behalf, and their testimony was substantially the same as that proffered at the hearing before the Board.

In addition the appellant called as its witnesses Bernard Rausch (the president of the corporate appellant) and Peter Toriello (who was on duty as a bartender on the night in question).

Rausch testified that, on Person's second re-entry to the bar, he walked to the rear to his girl friend and sought to be served. However, Rausch ordered the bartender Toriello not to serve him because "he looked as if he had too much to drink." Accordingly Person was not served nor did he consume any drinks at these premises on the night in question. The witness went on to state that the bar was unusually crowded on this evening; there were approximately seventy to eighty people in the premises. He heard no loud noises or quarrels, nor did anyone complain to him about being annoyed or disturbed. So far as he was concerned, nothing occurred at the premises. The first thing he knew about any assault was when Miss Parham came to him and told him that a man was lying outside and requested a wet towel with some ice. He continued to wait on customers and then, shortly thereafter, went outside and saw Person sitting on the ground propped against the wall in a sitting position. Miss Parham said to him, "You ought to get him to a hospital, get him to a doctor." He then went to a telephone which was located behind the bar and called the Martland Medical Center. He phoned police headquarters and the line was busy. Before he had a chance to try again, a police officer entered the premises and advised him that he was going to take Person to a doctor or a hospital. On cross examination he was asked why he didn't tell Person to leave the premises when he observed that he had too much to drink. His answer: "He came in and I figured he would walk out when we refused." He admitted that he did not see him leave because he was busy serving other patrons at the other end of the bar.

Peter Toriello, called on behalf of the appellant, stated that he was directed by Rausch not to serve Person because he appeared to have too much to drink; that, accordingly, this man was not served on that evening. He denied that he heard any loud noises or arguments, nor did anyone complain to him about being annoyed or bothered. He did not see any assault take place, nor did he hear anything unusual take place on that evening. The first thing he knew about any person being assaulted was when Miss Parham returned to the premises and Rausch handed her a towel and some ice cubes. Finally, he added that he did not know who Person's

assailant was, nor did he witness any incident with Person or Miss Parham.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such measure is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). In order for the Board to sustain this charge it must establish, by the preponderance of the credible evidence, (1) that there was in fact a brawl or disturbance or act of violence on its licensed premises, and (2) that the licensee allowed, permitted and suffered the same to take place and conducted its place of business as a nuisance.

Upon evaluation and examination of the entire record, it cannot be seriously argued that there was not an act of violence which occurred inside the licensed premises. There is no doubt in my mind that Person was struck by an unnamed aggressor and that he received a severe blow to his eye. The severity of the blow was such that he was required to receive medical attention, and was confined in the hospital for several weeks.

It is equally clear, however, that this blow was a spontaneous action on the part of this assailant, and both witnesses for the Board agreed that it happened within a minute or so. It seemed quite understandable that Person would object to this individual placing his arms around the waist of his girl friend and, when he objected, the attacker struck him without warning. The evidence further reflects the fact that there was just one blow struck; Person then slumped to the floor and was rendered semi-conscious, if not unconscious.

The almost involuntary action of Miss Parham in grabbing the shirt of the assailant also happened within a few seconds, and she was unable to restrain this individual from leaving the premises. Miss Parham gave conflicting versions of how the assailant left the premises. At the plenary de novo hearing before me she stated that the assailant was told by the bartender to leave the premises immediately. In her earlier testimony before the Board she stated that, as soon as Person was struck, this unnamed aggressor immediately ran out of the tavern. Regardless, however, which version is the true one, it is readily apparent that this incident was immediately concluded after the single blow; then Person was promptly dragged out of the premises and placed on the sidewalk.

The next issue which must be resolved is whether or not the licensee, its agents or employees permitted and suffered such act of violence to occur. In Conner v. Fogg, 75 N.J.L. 245, 247 (Sup.Ct. 1907), the court stated:

"To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term 'permit' has been often used synonymously with 'suffer,' so that it may be said that one who suffers the doing of a thing which he might have prevented permits it."

The key to the sustenance of this charge is whether the appellant might have prevented the incident. There is a heavy responsibility imposed upon licensees to prevent disturbances or brawls from occurring on licensed premises and to take immediate action when they arise. Nevertheless it would be manifestly

unfair to hold a licensee liable where a disturbance occurs without warning or even without his knowledge. This principle of responsibility has often been enunciated by this Division in "brawl" cases starting in 1935. See Caso v. Belleville, Bulletin 101, Item 8. Thus, in Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3, a finding of guilt on a brawl charge was reversed where the facts reflected an assault by one person on another. In that case the Commissioner found that there was nothing in the record that anyone on the licensed premises on that occasion was drunk or had been drinking to excess. In Zicherman v. Newark, Bulletin 613, Item 5, the finding of guilt on a brawl charge was reversed where the testimony indicated that there was a sudden assault by one patron upon another, the court saying that there is nothing in the record to show that the licensee "had any knowledge of bad blood existing between the two girls .... Nor does the evidence in the case indicate that the licensee or her agents participated in any of the events leading up to the fatal blow."

In Re Lojko, Bulletin 655, Item 6, a charge of permitting a brawl was dismissed. In that case the record shows that there was no disturbance prior to a fight between two patrons. The evidence failed "to involve the licensee or her employees with the disturbance, brawl or resulting fatality." In Re Club Washington, Inc., Bulletin 683, Item 9, a charge of permitting a brawl was dismissed and the Director stated, "I fail to find in the record any circumstances which would attribute any responsibility for the incident to the defendant or any of its employees." In Engel v. Belleville, Bulletin 694, Item 5, a finding of guilt on a brawl charge was reversed because, as the Director stated, "The record fails to demonstrate any responsibility for the fracas by the licensee .... Although a fight did occur ... there is nothing in the testimony to show that the licensee had any reason to anticipate the trouble which occurred...."

Both Rausch and Toriello denied having any knowledge of this incident, and Rausch says that the first he knew that Person was assaulted was when Miss Parham came into the premises and requested a wet towel and ice. It seems improbable that both of these men who were on duty as bartenders at that time were not made aware of this assault upon Person in view of the fact that one of the bartenders immediately jumped over the bar and helped to drag Person out of the premises. I am not convinced that their testimony was entirely credible in this point. I believe that their testimony was motivated by a fear of the possible consequences of the occurrence of this incident in the premises. It would have been much better had they given an honest and accurate account without fear of inculpation.

Counsel for the Board maintains that Rausch knew that Person was intoxicated during his stay at the premises because he admittedly directed the other bartenders not to serve him. He reasons that his failure to immediately evict him from the premises constituted a "suffering" within the contemplation of this charge. The evidence, however, fails affirmatively to show that this man was the aggressor or assailant, but in fact was the victim of the sudden blow. In any event, the record shows that this was a sudden flare-up. The assailant immediately left the premises and the bartender helped to evict Person from the premises. Cf. Ka Zam Bar, Inc. v. Newark, Bulletin 1595, Item 1.

There is a peripheral aspect to this case which requires comment. Miss Parham testified that she went to a telephone booth

located nearby and summoned the police. Rausch states that he first called the Martland Medical Center and was advised that he was required to notify the police before any medical assistance could be given. He then states that he called police headquarters but received a "busy signal." The fact is, however, that he did not contact the Police Department. The duty to notify the police is not an absolute one, and depends on the particular circumstances. See Jackson v. Newark, Bulletin 1608, Item 4. However, in most situations the more responsible course is to take prompt action in contacting the police authorities.

The Director has recently had occasion to admonish licensees with respect to their responsibility in this regard. In Jackson v. Newark, Bulletin 1600, Item 2, the Director stated:

"Indeed, where a licensee or his employee becomes aware of the apparent commission of any crime in connection with the licensed business, they should notify the police. I am taking this opportunity to impress this point upon licensees in order that they, as citizens with a strong stake in proper law enforcement, may assume a leading position in cooperating with law enforcement agencies."

That case differs from the case sub judice in that a knife was wielded by a participant in a fight on the licensed premises, whereas here no weapon other than the man's fist was used in the commission of this act of violence. It is my conviction that there was inadequate policing of these premises on the date in question. Recognition of this fact by the appellant is manifest by its disclosure to the Board, at the original hearing before it, that arrangements have been made since that date to employ a special police officer, and such officer has been so employed at the premises since that time.

Under the totality of the circumstances present herein, I am satisfied that the Board has failed to establish by a fair preponderance of the believable evidence that the appellant allowed, permitted or suffered a brawl or act of violence in or upon its licensed premises, within the contemplation of the applicable rule thereto.

I therefore recommend that the action of the Board in finding appellant guilty of the charge should be reversed, and that an appropriate order be entered accordingly.

#### Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony and the oral argument of counsel for the respective parties, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3d day of August, 1965,

ORDERED that the action of the respondent be and the same is hereby reversed.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1656

January 26, 1966

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New Jersey State Library



DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary )  
Proceedings against )  
One Eleven Wines & Liquors, Inc. )  
111-113 Albany Street )  
New Brunswick, N.J., )  
Holder of Plenary Retail Consumption )  
License C-8, issued by the Board of )  
Commissioners of the City of New )  
Brunswick. )  
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CONCLUSIONS  
and  
ORDER

Busch & Busch, Esqs., by Malcolm R. Busch, Esq., Attorneys for  
Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Wednesday night April 28, early Saturday morning May 1, Thursday night May 6, and Friday night May 7 into early Saturday morning May 8, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

At the hearing held herein three ABC agents testified with respect to the said charge. The primary testimony was given by Agent S and his testimony was substantially corroborated, by stipulation, by two other agents.

The substance of the Division's testimony was as follows: Pursuant to specific assignment to investigate alleged homosexual activities at the licensee's premises, ABC agents made four visits to the said premises. On Wednesday, April 28, 1965, at about 8:45 p.m., the three agents entered the barroom and seated themselves at the bar. On this occasion, according to the testimony of Agent S, they noted that there were about nine males and no females present. At the height of the activity the patronage increased to about eleven, nine of whom appeared to be "very effeminate; from their mannerisms and their demeanor and their actions they appeared to be males impersonating females." They were kept under observation for about one and one-half hours. Their mannerisms were described as follows: They were conversing in a lisping tone of voice and used limp wrist movements to each other; one patron would stick his tongue out at another and they would laugh and giggle; they drank in a very dainty manner, took short sips from their straws; looked into each other's eyes as they conversed. When walking they swished and swayed.



The agents returned to the premises on Saturday, May 1, 1965, at about 12:01 a.m., at which time they noted that there were fifty male and two female patrons, all of whom, with the exception of one couple, appeared to be homosexuals. On this occasion the agents observed that many of them were wearing fluffy sweaters, tight chino pants, gaily printed sport shirts and turtle-neck sweaters. There was a very strong aroma of perfume which exuded from these individuals. The agents further observed that many of these patrons were holding hands with each other, rolling their eyes, fluttering their eyelashes and singing love songs to each other around a player piano. They also overheard two of these apparent homosexuals discussing another apparent homosexual and one said, "Oh, Rick and I are very close friends. We are not what you call intimate. We are like close sisters, friendly sisters." The agents also testified that some of the patrons had their arms around the waists of some other patrons and frequently "one would throw a kiss in gesture to another, such as putting his hand to his mouth and making a motion, a kissing sound, and throw it in the air and the other would catch it and pick it up and put it on his lips."

During this visit Mr. Mack (later identified as E. Manning Mack, the manager and principal officer of the corporate licensee) was walking around in close proximity to these individuals. He appeared to know many of them and they knew him by name. Some of them placed their arms around his back and his shoulders, and several of them purchased drinks for him.

The third visit was made on Thursday, May 6, 1965, at approximately 10:30 p.m. At this time the agents noted that there were fifteen male and two female patrons sitting at the bar. All of the male patrons appeared to be homosexuals bearing the characteristics as hereinabove described. One of the women appeared to be a lesbian and was sitting with another woman who apparently was a normal female. The apparent lesbian bought drinks for her companion and appeared to be very affectionate toward her.

About 11 p.m. two other apparent homosexuals entered the premises and immediately seated themselves at the bar. One of them kissed and embraced the other in the immediate presence of the bartender on duty and Mack. The agents also overheard a conversation wherein the apparent homosexual who was kissed was asked how he was "making out" and he replied, "If you can't fight them, lick them", accompanying this statement with a flutter of his eyelashes, rolling of his eyes, giggling and protruding his tongue in response to similar gestures by his companion.

The final visit was made on Friday, May 7, 1965, at 11:15 p.m. On this occasion there were twenty-five males and several females sitting at the bar. Mack and his wife were in the barroom and the dining-room area during the entire visit of the agents. The patronage increased to about thirty-five males and several couples in the rear dining-room, all of whom at the bar appeared to be apparent homosexuals. They were dressed in the same manner as described on previous visits. Some of them sat around the player piano singing a song entitled "Mister Wonderful", during which time they rolled their eyes at each other and had their arms around each other's neck. They would throw kisses at each other and giggled and laughed in an effeminate manner. They also swished and swayed when they walked, rolled their eyes and used endearing terms to each other. One of these apparent homosexuals referred to his companion as his girl friend; another one was called his lover.

The agent then engaged Mack in conversation, saying, "I see all the girls are here tonight as usual", indicating that he was referring to the male patrons. Mack replied, "Yes, they

are." The agent then said, "I never saw such a good-looking group as them, including the two lesbians", to which Mack replied, "Who are we to say what they are, what they do, or when they leave here, who is to care what they do when they leave here?" He added, "They are a well-behaved group and they are a good-spending group. I don't allow them to drag in here." Mack further explained that he caters to two separate types of patronage and, pointing to the persons sitting in the dining-room, said, "See those people in the back? Those are mostly straight people."

At this point the agents identified themselves, and they retired to an adjoining room. Mack then stated, "I know I am in trouble" and then went into a detailed defense of his position. He told the agents that he had suffered from a physical disability, had left his place of business for treatment. When he returned he found that there were some "queers" in his premises. He then instructed these "queers" that they were not to dress in female attire and that they were not to drag or to use any make-up. He also insisted that, if he actually saw any kissing among his patrons, he would have "thrown them out immediately. He does not permit them to drag in the premises." Finally he asked the agents whether they would advise him to "get rid of them right away." He also indicated that he did not intend to contest this charge.

Under searching cross examination Agent S defined the terms which he used in his direct examination and stated that, while some of the actions and mannerisms considered by themselves might not represent apparent homosexuality, the combination of these mannerisms and characteristics and behavior of these patrons represented to him the complex upon which he arrived at his opinion expressed in his direct testimony. He explained that the agents did not attempt to converse with these apparent homosexuals because they "ignored us completely. Didn't attempt a conversation."

E. Manning Mack (president of the corporate licensee) was the only witness for the defense, and his testimony represented a blanket denial of the charge. The substance of his testimony was that, while he was present on all of the occasions testified to by the agents, he noticed nothing unusual about the behavior, mannerisms or conduct of these individuals. He saw no patrons throwing kisses; he did not detect any strong odor of perfume emanating from the group of male patrons, and denied inviting any apparent homosexuals to attend the premises.

On cross examination he insisted that the conduct of all of the patrons at the bar was entirely normal, and he noticed nothing unusual about their mannerisms or behavior. He was asked whether he considered it unusual to have fifty male patrons at the bar and no females on Friday night and early Saturday morning, as testified to by the agents. His answer was, "Well, Friday nights and Saturday nights the students and people in general don't have to work for the weekends, so those are the nights that they go out. That's the reason." He admitted that on that night he kept his patrons under surveillance because he sought to avoid arguments or fights and wanted to make sure that there was not any over-consumption by his patrons. He also felt there was nothing unusual in having one patron buy a drink for another or toast another, but vigorously denied seeing any of these patrons throw kisses or make any other intimate gestures. He was then asked if throwing a kiss or catching a kiss would have any significance to him, "Wouldn't it indicate that they were queers", to which his answer was "No." He had no recollection of the specific question directed to him by the agents as testified to by them, except that he does remember discussing his physical disability which required that he absent

himself from the premises for a period of time. He further denied knowing what a homosexual is, and in fact first started to look into the nature of homosexuality after this offense. He states that he never knew the exact definition of a homosexual, and still does not know it until this day, although he has been in the tavern business for twenty-one years. In answer to a further question about the nature of his patronage, he stated, "Well, they told me that I had homosexuals and queers there and I said, 'To my observation they are not.' I said, 'Can you pinpoint them? Can you definitely say that they are?' They said, 'No, we can't. Not even a psychologist or a psychiatrist can verify that.' So I said, 'Neither can I.' And further: "'In your opinion,' and I said, 'If you have had more experience than me -- in my opinion I don't see anything wrong.' I said, 'In your opinion you tell me how can I get rid of them? How can I walk over to a person and say, 'If you are a homosexual, if you are, I don't want you in here'".

He added that it was his impression that it was his obligation to serve anyone who came into the premises, and that he had no right to refuse a person who came in because "you didn't like the way he looked." He was then asked by me the following:

"Q ... Assuming that you saw, if you saw what the agents described what they saw, would you consider them apparent homosexuals?

"A I wouldn't consider anybody an apparent homosexual, and I told them if the only thing is their behavior was obnoxious to other people or was obnoxious to me, I told them if I saw men kissing each other or hugging each other, I would throw them out bodily."

I then pursued the matter further and asked whether, if he saw what the agents testified to, would he have evicted them from his premises, and his answer was, "I don't think I would have the right to evict them. I would just tell them to behave themselves."

On rebuttal Agent S testified that at no time, in a conversation with Mack, did he ever assert that he would be subject to suit if he asked these apparent homosexuals to leave the premises.

I have detailed the testimony of the witnesses for both the Division and the licensee in order to obtain an objective prospective of the true situation that existed on the dates in question. My careful analysis and evaluation of this testimony, coupled with my observation of the witnesses as they testified, lead me to the conscientious conviction that the version as narrated by the agents is a credible, believable and factual version.

On the contrary, I was not impressed by the credibility or veracity of the corporate officer who testified on behalf of the licensee. I found that his testimony was evasive, uncertain and lacking in forthrightness. I am particularly unimpressed with his responsibilities and obligations, as an agent of the licensee, with apparent homosexuals. While denying vigorously that there were any apparent homosexuals on the licensee's premises, his testimony appeared to be rather contradictory on this point. For example, in his direct testimony, while denying the presence of homosexuals, he responded to the following question of his counsel:

"Q What did you say to the inspector?

"A The inspector said to me, 'These are homosexuals.' I said, 'Well, I wouldn't know.' And I said, 'If they are, as long as they behave themselves here,

and I don't know the difference, I don't know who is a homosexual because I don't know any homosexuals,' I said, 'If they do anything on the outside, that's none of my business. I can't control them there. Here, I don't know who is and who isn't and I don't see any, as far as I know, because I wouldn't know one.'"

If the description of the manner, conduct and characteristics of these apparent homosexuals, as given by the agents, is to be believed, it should have been the duty and prime responsibility of the licensee and its agent to recognize that these persons, as charged herein, were apparent homosexuals. As the agents related their observation, the presence of fifty males in the circumstances described on one of the occasions should have made it crystal clear to the licensee that this, standing alone, was a suspicious circumstance.

The following other circumstances should have brought home to licensee's agent the true nature of these patrons, viz., the use of such endearing terms as "lover", "sweetheart" and "darling" by males addressed to other males; the throwing of kisses; the embracing of each other around the waist; their manner of walking by swishing and swaying; their kissing each other, and hugging each other, and other effeminate gestures and mannerisms and conduct, including the heavy use of perfume. All of these should have alerted licensee to the true nature of these patrons.

I am convinced that Mack actually knew what was going on. I am not at all persuaded by his testimony that he did not know the definitive nature of apparent homosexuals. Licensees may not avoid the responsibility for the conduct of the licensed premises merely by closing their eyes and ears. On the contrary, licensees must use their eyes and ears and use them effectively to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3. Moreover, a licensee is under a duty to exercise close supervision of his licensed premises, and violations occurring therein cannot be excused because he had no personal knowledge of them. Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5.

The licensee is under the impression, and this is stressed by its counsel in a memorandum submitted in summation, that, in the absence of an actual disturbance, this licensee or its agent would be prevented under R.S. 18:25-12(f) (the Civil Rights Act) from evicting such apparent homosexuals regardless of their numbers. He cites the above statute which makes it unlawful for an owner of a place of public accommodation to "refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof ...." He argued that a tavern is a place of public accommodation; that the licensee comes within the definition of the statute and that ousting of such individuals would be violating the civil rights of those patrons, "particularly their right to congregate and assemble without interfering with the rights of any other person and without violating any law."

This specific argument was disposed of by then Commissioner Burnett in Re Plaza Hotel-O'Leary, Bulletin 188, Item 9. Commissioner Burnett ruled that this argument is groundless because it can only apply to an action under the Civil Rights Act where a person was refused liquor because of his race, creed or color, or previous condition of servitude, or for some cause of reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude", citing Shubert v. Nixon Amusement Co., 83

N.J.L. 101 (Sup.Ct. 1912). He concluded that a licensee has an absolute right to refuse to sell or serve liquor to anybody provided only that such refusal is not made on account of race, creed or color. He further cited his early decision in Re Dorflinger, Bulletin 136, Item 12, as follows:

"The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law ...."

and further cited Re Rollka, Bulletin 142, Item 4:

"The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

In Re Dorsey, Bulletin 226, Item 11, it was held further that there was nothing in the alcoholic beverage law which defines licensed places as public places. Neither the term "tavern" nor "saloon" is used in the law (Re Phillips, Bulletin 200, Item 5), let alone a definition as to whether or not they are public places. The Commissioner cited in that case State v. Lynch, 23 N.J.L.J. 45, wherein Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." He said:

"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

His ruling was followed by Justice Parker in State v. Colgan (Sup.Ct. 1919), 92 N.J.L. 307. The Commissioner then stated that, so far as the alcoholic beverage law was concerned, he has consistently treated taverns as being "private places" and hence has held the proprietor responsible for whatever goes on therein and has sustained his power, commensurate with such responsibility, to maintain order and decency, citing Re Tait, Bulletin 188, Item 9; Re Craster, Bulletin 198, Item 6. See Re Minetti, Bulletin 264, Item 14. A similar contention that apparent homosexuals cannot be barred from licensed premises has most recently been rejected in Re Jo Stem Corp., Bulletin 1625, Item 2. To the same effect, see Re Kaczka & Trobiano, Bulletin 1063, Item 1; Re V.M. & S., Inc., Bulletin 1345, Item 6; Re Bader, Bulletin 1073, Item 4.

I therefore conclude that the contention that the licensee is estopped under the provisions of the Civil Rights Act from excluding this type of patronage and his further contention that such patrons cannot be ousted from a tavern because it is a public place are both without substantial merit and must be rejected.

The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the alcoholic beverage law. Re Olympic, 49 N.J.S. 299, 307.

The court observed in In re Schneider, 12 N.J.S. 449, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises."

The court further went on to state:

"'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are contra bonos mores, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2nd ed.)."

One further point: Counsel presses the view that there was no proof that these persons were in fact homosexuals. However, the cases are legion in support of the principle that it is not necessary to prove that these persons were in fact homosexuals. It is sufficient to show that by their appearance, mannerisms, actions and behavior they are apparent homosexuals. See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App.Div. 1957); Re Rutgers Cocktail Bar, Bulletin 1543, Item 3.

Finally, the attitude of our courts with reference thereto was well delineated in Murphy's Inc. v. Davis, 70 N.J. Super. 87:

"It should not be thought that the court is callous to the problem of the homosexual, medically or socially. The public interest in tight control over the liquor business, In re Olympic, Inc., 49 N.J. Super. 299, 306 (App.Div. 1958), certification denied 27 N.J. 279 (1958), involves, however, neither the curative approach of the physician nor the analytical view of the sociologist. The primary concern in this regard is maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded."

I am persuaded by the clear and convincing proof in this case that the Division has established the charge; that the licensee and its agent knew or should have known of the presence and activities of these apparent homosexuals, and that it did in fact acquiesce in such assemblage, in violation of the intent and purpose of Rule 5 of State Regulation No. 20.

Absent prior record, I recommend that an order be entered suspending the license for a period of sixty days, the usual penalty imposed where the violation involves simple congregation of a relatively large percentage of apparent homosexuals. Re Charmac, Inc., Bulletin 1630, Item 2.

#### Conclusions and Order

Exceptions to the Hearer's report and argument with reference thereto were filed by the attorneys for the licensee pursuant to Rule 6 of State Regulation No. 16.

The Hearer's report amply answers the arguments advanced by the attorneys for the licensee in their memorandum and exceptions. However, I want to comment on the motion made by the attorneys for the licensee during the course of the hearing that the charge herein be dismissed on the ground that Rule 5 of State Regulation No. 20 fails to specifically define "nuisance" as set forth in said rule.

The short answer to this is that "nuisance" as contemplated in this rule, and specifically applied to the charge sub judice, has been extensively defined in many of our adjudicated cases.



It is well settled by the dictionary meaning. As defined in Webster's Third New International Dictionary, "nuisance" is:

"an offensive, annoying, unpleasant, or obnoxious thing or practice: a cause or source of annoyance that although often a single act is usual, a continuing or repeated invasion or disturbance of another's right."

See also Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3; Re Cosfair Corporation, Bulletin 875 Item 9; Re Arlington Inn, Bulletin 982, Item 1; Benedetti v. Trenton, Bulletin 1040, Item 1 (aff'd 35 N.J. Super. 30 (1955)); Re Marrone, Bulletin 1076, Item 4; Re White House Inn, Inc., Bulletin 1252, Item 2; Schwartz v. Paterson, Bulletin 1577, Item 2.

As the Hearer pointed out, there were, on the occasions complained of, congregations of a relatively large percentage of apparent homosexuals on the licensed premises. These patrons, by their acts, conduct and demeanor, satisfied the agents and the Hearer that they were indeed apparent homosexuals and their presence constituted a nuisance within the contemplation of this rule. The promulgation by the Division of Alcoholic Beverage Control of the rule providing that no licensee shall allow, permit or suffer in or upon its licensed premises any lewdness or immoral activity or conduct is within its orbit of authority. McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 51; R.S. 33:1-39. And, as was pointed out in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405:

"... the liquor business must in the interest of the public welfare be carefully supervised and tightly restrained, and to that end, the governmental power extensively to regulate licensees should be accorded broad judicial support."

See also Carelis v. Division of Alcoholic Beverage Control, (App. Div. 1961), not officially reported, reprinted in Bulletin 1430, Item 1.

In addition to the numerous cases which define "nuisance" as used in the applicable rule, common sense would dictate that the conduct and activity as described in the Hearer's report would be "inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud." Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, *supra*. Patrons of liquor licensed premises should not be exposed to such activity.

The testimony of the agents that these apparent homosexuals were holding hands with each other, rolling their eyes, fluttering their eye lashes and singing love songs to each other around the player-piano, the embracing of male apparent homosexuals by other male apparent homosexuals and the throwing of kisses, the open kissing, the swishing and swaying when they walked, and the other mannerisms and conduct could not but have an unwholesome and adverse effect upon the other patrons in these licensed premises.

It is no answer for the licensee's agents to deny that these activities took place in their presence. I am persuaded, as was the Hearer, that the conduct and activities as testified to by the agents actually took place and were, or should have been,

observed by licensee's agents. Thus it became the duty of the licensee to take immediate action to prevent such prohibited conduct on its premises. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra; see 48 C.J.S. Intoxicating Beverages, sec. 199, p. 330.

Counsel for the licensee raises the additional argument that the agents were not qualified to testify as to the apparent homosexuality of the patrons so described. Witnesses are not required to be psychiatrists or doctors in order to testify as to their observations of these apparent homosexuals. Agent S was closely cross-examined with respect to his experience with investigations relating to apparent homosexual activity. He stated that he has had considerable on-job training and, in fact, specialized in this type of investigation for this Division for a number of years. Just as an experienced investigator may be permitted to testify with respect to apparently intoxicated persons. (cf. Freud v. Davis, 64 N.J. Super. 242, 247), so too a witness with ordinary intelligence may, after proper observation, testify as to whether or not a person is an apparent homosexual. Cf. Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87.

I conclude, therefore, that, in the totality of the evidence presented herein, the Division has established its case by the overwhelming preponderance of the credible evidence.

Having carefully considered the entire record, including the transcript of the testimony, the memorandum submitted in summation by the attorneys for the licensee, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusion and adopt his recommendations. Hence I find the licensee guilty as charged, and shall suspend its license for a period of sixty days.

Accordingly, it is, on this 27th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of New Brunswick to One Eleven Wines & Liquors, Inc., for premises 111-113 Albany Street, New Brunswick, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, January 3, 1966, and terminating at 2 a.m. Friday, March 4, 1966.

JOSEPH P. LORDI,  
DIRECTOR



STATE OF NEW JERSEY  
 Department of Law and Public Safety  
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
 1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1667

April 11, 1966

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New Jersey State Library

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony and the written argument of the respective attorneys, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 16th day of February, 1966,

ORDERED that the action of respondent be and the same is hereby reversed.

JOSEPH P. LORDI,  
DIRECTOR

DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - FOUL LANGUAGE - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 80 DAYS.

In the Matter of Disciplinary )  
Proceedings against )  
C. & S. Tavern Corp., )  
t/a Jack's Star Bar )  
24 Tichenor Street )  
Newark, N. J., )  
Holder of Plenary Retail Consumption )  
License C-143, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Newark. )  
----- )

CONCLUSIONS  
and  
ORDER

Louis R. Cerefice, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleads not guilty to the following charges:

- "1. On Wednesday night, June 30, Friday night July 2 into early Saturday morning July 3, Saturday night July 10, early Sunday morning July 11, Wednesday night July 14, early Sunday morning July 25, early Saturday morning July 31 and early Sunday morning August 15, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females and females impersonating males, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On all the dates and occasions aforesaid, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.

"3. On Saturday, August 21, 1965, at about 11:20 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Gordon's Distilled London Dry Gin, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

Five ABC agents participated in the investigation which resulted in the charges preferred herein.

Agent S testified that he visited the licensed premises "on Wednesday, June 30, I returned on Friday, July 2, on Saturday, July 10, on Sunday, July 25, on Saturday, July 31, on Sunday, August 15, and on Saturday night, August 21."

Agent S further testified that at 10:30 p.m. on July 2, 1965, he, Agent H and Agent M entered licensee's premises and "took positions on the right-hand side of the bar toward the rear;" that he observed three bartenders on duty, among whom was one called "Huck" (Sylvester Huckaby); that seated between two women at the patrons' side of the bar was a man referred to as "Jack" and "The Boss," subsequently identified as Bernard Rauch (hereinafter Rauch), president of the licensee corporation; that there were approximately ten female and twenty male patrons in the establishment; that his attention was drawn to about five females seated in a group and four males also seated in a group. Agent S testified, in describing the females, that "two of the five in question wore regular men's shirts, they are shirts with 'T' neck showing 'T' undershirt showing, one was tattooed on the forearm, her sleeves were rolled up, they wore men's pants with zipper fly fronts." He further stated "All of them had zipper fly fronts. One had a double-breasted jacket on, with a brown colored man's shirt, man's haircut with side burns. One female looked like a male, and after close observation -- and also very flat chested -- it was a lady, it wasn't a male, but it was a female." Agent S further stated that two normal looking females were with the five aforementioned, and that the latter would purchase drinks and pay for them for the two female companions. He also testified that the five females "walked like men", and two of them had "harsh voices." Agent S described the four males under observation as "very effeminate appearing" and that three of them "swished and swayed as they moved about the premises. They conversed with their hands in limp action. One rolled his eyes at another while talking to a straight male." Agent S further testified that one of the effeminate appearing females wore long hair and lipstick and expressed a desire to go home, and that the masculine-looking-type female ordered her to remain seated, using a filthy word, to which the girl with the long hair and lipstick retorted with a filthy expression which need not be repeated here. Agent S said Rauch was seated about five stools away at the time. Shortly thereafter a female attired in a "man's double-breasted jacket and pants and side burns" shouted at Dorothy C---, seated alongside of Rauch, and the remarks that passed between them were so shocking, sordid and vile that the repetition thereof would serve no useful purpose. Agent S further said that, when Rauch intervened, the heated discussion subsided. Later, according to the testimony of Agent S, he spoke to Huckaby and directed his attention to the two persons whose conversation was initially referred

to and, in response to a question as to the sex of the one wearing a "T" shirt, Huckaby said she was a girl and explained the one seated next to her "is her wife. They are married." When Agent S inquired if Huckaby wasn't kidding, he said "No, I'm not kidding. That is the truth. They are lesbians." Huckaby further stated that Mrs. C--- had been married to the lesbian arguing with her and that she had left her and was now going out with Jack (Rauch). Asked his opinion of the five females and four males, from their actions, speech and attire Agent S said "they appeared to be homosexuals, queers, fags, commonly known as fags." Agent S further stated that, during his three-hour stay in the premises, the tenor of the language used by many of the patrons was filthy.

Agent S testified that he again visited licensee's establishment on July 10 and observed about twenty patrons; that two males, because of their dress and mannerisms, "appeared to be homosexuals;" that he saw Rauch there and inquired of Huckaby concerning the absence of lesbians and Huckaby replied "You are here on the wrong night;" that during his hour-stay in the premises the language used by many patrons was "obscene language, foul, filthy." The agent further testified that he and Agent H returned to the place at midnight on July 11 and that "about 20 people, 25 people" were there, among whom he observed seated together two of the females, one having "a man's suit on, double-breasted jacket, pants with a zipper fly front, man's shirt, with a heavy rock and roll hair-do combed back, sweeping back to his side of the temples" and "the other one was dressed in a pair of slacks and a shirt;" that he also saw a male "talking to a female and male, and he was swishing and swaying and moving about the premises. He had a lispy tone when he spoke, waved his hands in limp-wrist fashion;" and that the same filthy language by patrons was heard as prevailed on his previous visit.

The testimony of Agent S further discloses that he and Agent H again entered the licensee's premises July 25 at about 12:15 a.m., and that Huckaby, a Spanish-speaking male and a person called "Al" were tending bar; that there were "about 20 or 25 people", among whom were "four females" and "three males" seen on prior visits, who again attracted his attention because of the way the females were dressed and the effeminate manner of the males; that a male entered wearing a "yellow polka-dot middy blouse" and "his hair up in fashion they tease hair;" that "he swished and swayed" when walking and had "his eyebrows plucked." Agent S leaned over to the uniformed special officer employed by the licensee seated next to him at the bar, advising him that he and his companion (Agent H) had a bet concerning the sex of the person in question and the officer said that the person was a male. The officer said that he was instructed by Rauch to "keep them out, the bad ones." Agent S stated that the language was just as filthy as that used by the patrons on previous visits.

Agent S testified his next visit to the licensee's premises was on the morning of July 31 just after midnight, being accompanied by Agents H and R. He noticed that there were "about 20 or 25 people in the premises" and among them he observed two females, one of whom he recognized from a prior visit; that "they were acting in the same manner. They were masculine in their actions. They had no make-up, they had men's haircuts, they wore men's clothing, men's shoes. They drank their beer roughly, grabbed it about the glass and put the glass down. Threw ashes from the cigarettes in the tray and flicked them." Agent S discussed these two females with Huckaby and he agreed that they were tough-looking. Again the language used by patrons was filthy.

Agent S testified that he and Agent H visited licensee's establishment on August 15 after midnight, and there were about thirty people in the premises; that he observed two males and six females who dressed and conducted themselves as those described on previous visits. He further said that some other girls in the group appeared to be females as they wore long dresses and had long hair. He further stated that "the more prominent male-appearing female was friendliest with Mr. Rauch. On occasion she would talk to him in masculine manner, lean on him, put her arm on his shoulder, and drink together." He also testified that two males were dressed in male attire "but their speech was slurred on occasions, and they used lispy tones on occasion while speaking." He also noticed a male-appearing female lean over and kiss her female companion; that Agent S then asked Huckaby how come they kissed one another, and he said "Why not, man? They are married." Agent S said that the language again used by the patrons was filthy and comparable to that used by patrons on his previous visits.

Agent S testified that on his last visit to licensee's premises on Saturday, August 21, he was accompanied by Agent H; that at 11:15 p. m., when he and his fellow agent entered, Rauch and the Spanish-appearing male (later on identified as George Del Gado) were tending bar; that he observed a female seated at the bar (later identified as Luvinnia Henderson); that he heard her ask Del Gado for a pint of gin to take out and was told to "see the boss." She called to Rauch, who came over to her, and then went behind the bar, picked up a pint of gin and handed it to her; that she gave him three one-dollar bills; that he handed her the bottle of gin which she placed in her pocketbook. Mrs. Henderson then asked Rauch for six cans of beer but he refused her, saying "No, I can't give you beer. You know that. I gave you the gin already;" that, just before she left the premises, Agent S asked Rauch for a pint to take out but Rauch stated that it was too late; that, as Mrs. Henderson left the premises, Agent H followed her and brought her back into the barroom where she took the bottle of gin out of her pocketbook. Agents S and H then identified themselves to Rauch, to Mrs. Henderson and to Del Gado. Rauch was then questioned about the same but he stated that he had sold her the bottle before ten o'clock that night. Agent S then stated that he then discussed the language of the patrons and Rauch claimed that he could not control it because they are the type of people who live in the area. Thereafter Agent S questioned Rauch concerning apparent lesbians being permitted in the establishment and Rauch asked "Just because a girl wears slacks she is a lesbian? I am no doctor." Agent S then informed Rauch about his conversation with Huckaby, also of what the special police officer had informed him concerning the patrons. Rauch denied that there was ever an argument between a female and Mrs. C---.

Agent S was subjected to extensive cross examination by the attorney for the licensee, but the answers were substantially the same as those given on direct examination. The attorney also directed questions at Agent S with reference to his sobriety on the various visits to the licensed establishment. Agent S answered that, although he had some drinks of alcoholic beverages, he was perfectly sober at all times.

Agent H, who accompanied Agent S on the various visits to the licensee's premises, substantially corroborated the facts testified to by Agent S. In addition thereto Agent H testified that he also visited the licensee's premises on July 14th, entering the tavern at "9:35 p.m." The visit was terminated approximately "11:05." On this visit he was accompanied by Agents S and

R. Agent H stated that Rauch was seated at the left-hand corner of the bar "near the ladies' room, at the usual position;" that there were approximately thirty persons on the premises, eight of whom were females; that two of the females, also two of the males, attracted his attention on this visit. He had seen both of the females on previous visits and his description of them was similar to that given by Agent S. Agent H was of the opinion that the females in question, because of their dress and mannerisms, were apparent lesbians, and the males, because of their conduct and mannerisms, were apparent homosexuals. Agent H testified that he saw the sale of the pint of gin to Mrs. Henderson on August 21, and his testimony as to the incident would be similar to that of Agent S. Agent M testified that he was with Agents S and H on the visit of July 2, and the morning of July 3 and, by stipulation of the parties, it was agreed that, if he were asked the same questions concerning occurrences on said dates, his answers would be similar to those given by them.

Agent St. and Agent R testified that on July 14th they visited the licensed premises in the company of Agent H and that, if they were asked questions similar to those put to Agent H for that date, their answers would be the same as his. Also, Agent R stated that his testimony with reference to the visit of July 31st would be similar to that given by Agent S. With respect to all the agents, each was asked on cross examination regarding their educational background and the length of time they had worked for the Division and participated in investigations of the kind now under consideration.

Sylvester Huckaby testified that he was on duty on all of the dates mentioned in the charges preferred herein with the exception of August 21st. He denied that on the various dates vile language was used other than perhaps a swear word, and at no time was his attention ever attracted to females who acted like males or males who acted like females. Huckaby further denied that at any time he conversed with Agent S concerning the conduct and demeanor of patrons in the licensed premises.

Luvinnia Henderson testified that on the evening of August 21st she was in the licensed premises and the bottle of gin which she had in her pocketbook was purchased from Del Gado about five o'clock that afternoon. She further testified that, as she was going through the door, she was stopped by Agent H and returned to the bar, at which time he ordered her to give him the bottle of gin. She said that the average person curses occasionally but, when one gets loud in the licensed premises, the bartender stops serving drinks to the offender.

George Del Gado testified that he was tending bar on August 21st when Mrs. Henderson asked him to sell some liquor for off-premises consumption, and he told her he could not do so because it was after hours. Thereafter the girl walked out and was brought in immediately, and the agents then questioned the owner (Rauch). Furthermore, according to Del Gado, he was on duty early in the evening and, at quarter past five, he had sold Mrs. Henderson the pint of gin which she put in her pocketbook. He also said that, if patrons use any filthy language, he (Del Gado) cuts them off, takes them out, or calls the police.

Dorothy C--- testified that on July 2, 1965, she was present in the licensee's premises but did not see any males impersonating females or females impersonating males. She stated that some women in the establishment wore slacks and men's shirts but, in her opinion, this was not unusual because at times she dresses similarly. Mrs. C--- testified that she was celebrating her birthday and Rauch came from behind the bar, remained with her,

kissed her on the cheek and treated her to a couple drinks. She said that she is a frequent visitor to the premises and, when any profanity is used or any person becomes loud, Mr. Rauch refuses to tolerate it. Mrs. C--- denied that she ever had an argument with another person during which filthy language was used.

Dorothy Smith testified that she was in the premises on every week-end from July 2nd and until August 21st, and recalled seeing the agents in the establishment. She further testified that the patrons neither looked unusual to her nor did she see men impersonating women or vice versa. And, if a patron used obscene or vulgar language, the person would be directed to stop such conduct. Miss Smith recalled the evening of August 21st when the sale of a bottle of alcoholic beverages was alleged to have been made during prohibited hours, and it was her contention that she was present shortly after five o'clock that day when Mrs. Henderson purchased the pint of gin.

Rauch testified that, with the exception of Sunday nights, he works every week-end and was in the premises on the occasions about which Agent S testified; that he never observed anything unusual concerning the patrons' mannerisms or dress as he contended that, if any of the patrons made any advances to any other persons of the same sex, he would order them to "stay out of here." He also stated he remembered an instance when two women kissed each other but the reason for that was that they were sisters-in-law and one of them had just come back from her honeymoon. Furthermore, according to Rauch, when he heard any offensive language he would order the person using same to cease or to finish his drink and leave the tavern. Rauch testified that there are five signs in his place, two in Spanish and three in English, forbidding use of obscene language by patrons. He stated that two hospital employees patronize his place of business and they wear "off-beat type clothes" and "fancy-looking striped shirts." Rauch said that on August 21st Mrs. Henderson asked him to sell her some beer in cans but that he refused to do so. She then paid for drinks which had been served to her and her friends and, as she left, Agent S asked if he could have a pint of whiskey. He refused Agent S but suggested, if Agent S desired, he could have a container of beer. Shortly after Mrs. Henderson left the premises, she "was pushed through the door" by Agents S and H, which prompted patrons to go to her assistance. He (Rauch) testified he came from behind the bar to quiet the patrons. After the agents showed their credentials, he cooperated fully with them. Rauch further noticed that Agent A became very excited and that Agent H suggested to him that he quiet down. Rauch asked Agent S to point out any person who he (Agent S) believed to be a "queer" but the agent did not.

In rebuttal, both Agent S and Agent H denied Rauch's accusation that Agent S became excited making it necessary for Agent H to calm him down. The agents also denied that at no visit to the licensee's premises did they consume alcoholic beverages so that they were on the verge of intoxication.

Although some of the evidence may appear repetitious, the purpose is to show that on the respective visits of the agents the females and males in question on the licensed premises invariably followed a pattern in their dress, mannerisms or demeanor. Thus it discloses that the continuous congregating of such type of persons on the premises did not constitute merely an isolated occasion which might in any manner absolve the licensee or its employees of knowledge thereof. As then Commissioner Driscoll stated in Bilowith v. Passaic, Bulletin 527, Item 3:



"Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises."

It is not a requirement to establish by the evidence beyond doubt that the specified patrons in the licensee's premises were in actuality homosexuals. The evidence presented by the agents with reference to the conspicuous guise, demeanor, carriage and appearance of both the females and males in question meets the required proof that they were apparent homosexuals. See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405. Furthermore, all of the agents, specifically Agents S and H, have had experience with this type of investigation for a number of years and, consequently, they may testify from their observations whether or not in their opinion a person is or is not an apparent homosexual. Cf. Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87. I would be naive indeed to believe the testimony of Rauch and his employees, namely, Huckaby and Del Gado, who attempted to feign ignorance of the existing conditions during the times when both they and the agents were in the premises. Furthermore, I am not impressed with the testimony of Mrs. Henderson, Mrs. C--- or Miss Smith that they see nothing unusual with the attire of the females, which has been fully described by the agents herein. I am satisfied from the testimony presented in this matter that the licensee permitted apparent homosexuals to congregate on the licensed premises and there was nothing done to prevent such conditions. I might add that it is the duty of a licensee or his agents and employees to take immediate action to prevent such class of people habitually congregating on licensed premises. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, *supra*; Re Jo-Stem Corporation, Bulletin 1625, Item 2, and case cited therein.

With respect to the second charge, I am satisfied with the testimony of the agents that filthy and obscene language was used on the licensed premises by patrons at the time of their visits.

With respect to the sale of a pint of gin in its original container for off-premises consumption to Mrs. Henderson during prohibited hours, I am convinced that the agents have given an accurate account of what took place at the time. Thus I recommend that the licensee be found guilty of all the charges preferred herein.

Licensee has a prior record of suspension effective October 14, 1957 for ten days by the local issuing authority for sale of alcoholic beverages for off-premises consumption in violation of Rule 1 of State Regulation No. 38. (Inasmuch as there has been a complete change of stockholders of the licensee since that time, the record of this suspension should not be considered in fixing the penalty herein. Re Lounge 68, Bulletin 1602, Item 10.) Effective January 19, 1964 the license was suspended by the Director for seventy-five days for permitting solicitation for prostitution on the licensed premises and sale in violation of Rule 1 of State Regulation No. 38. Re C. & S. Tavern Corp., Bulletin 1549, Item 1.

I have considered the fact that the number of homosexuals on the premises on each visit by the agents constituted a relatively small percentage of the patrons. Hence it is recommended that the



license be suspended on Charge 1 for forty days (Re Jo-Stem Corporation, supra); on Charge 2 for ten days (Re Hauge, Bulletin 1629, Item 3), and on Charge 3 for thirty days, in view of the prior suspension for similar violation occurring in 1964 within the past five years (Re Cinaglia, Bulletin 1652, Item 4), or a total of eighty days.

#### Conclusions and Order

The licensee has filed exceptions to the Hearer's report pursuant to Rule 6 of State Regulation No. 16 in which it contends that the recommended finding of guilt is contrary to the weight of the evidence. With this I cannot agree. A careful and considered reading of the entire record satisfies me that the Division has established the truth of the charges by a preponderance of the evidence. No other conclusion is warranted. The fact that there were relatively few homosexuals congregated on the licensed premises during the period complained of goes to the question of punishment and not of guilt--a consideration properly reflected in the penalty recommended by the Hearer.

The licensee also argues that the testimony of the agents is necessarily colored so as to place themselves in a favorable light with their superiors. More specifically it states "...so that they can present a good report, a good case, in order to maintain a good 'batting average' with respect to convictions they are able to obtain in the line of duty...", and "their testimony should be weighed with not a grain of salt but with many grains of salt."

The argument advanced by the licensee is predicated on the assumption that agents of this Division color their testimony in a given case to their own advantage and at the expense of others and suggests that the Director scrutinize their testimony more closely than that of other witnesses. Such a suggestion, if adopted, would create a double standard unfair to the Division and inimical to the true interests of justice. The interest a witness may have or the advantage he may derive from the outcome of a given case may always be shown at the trial of that case through cross examination or independent proof. The weight to be given to the testimony of the witness whose credibility is being questioned may then be considered by the Director in the light of the entire record before him and not on any fancied predilections that find no support in the evidence.

In the instant proceeding the licensee, through its attorney, was given and availed himself of the opportunity to cross-examine Division witnesses and present testimony on his own behalf. Despite his efforts, the record is barren of any evidence to support the allegations that the agents colored their testimony or strayed from the truth.

After careful review of the entire record, including the transcript of testimony, the Hearer's report and the exceptions thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 28th day of February, 1966,

ORDERED that Plenary Retail Consumption License C-143, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to C. & S. Tavern Corp., t/a Jack's Star Bar, for premises 24 Tichenor Street, Newark, be and the same is hereby suspended for eighty (80) days, commencing at 2:00 a.m. Monday, March 7, 1966, and terminating at 2:00 a.m. Thursday, May 26, 1966.

JOSEPH P. LORDI,  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1671

APRIL 28, 1966

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9. DISCIPLINARY PROCEEDINGS (Atlantic City) - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 20 DAYS - EFFECTIVE DATE OF SUSPENSION DEFERRED.
10. STATUTORY AUTOMATIC SUSPENSION (Camden) - ORDER STAYING SUSPENSION.
11. DISCIPLINARY PROCEEDINGS (Passaic) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

New Jersey State Library

It is, on this 15th day of March 1966,

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS - NO  
REMISSION FOR PLEA ENTERED AT HEARING.

In the Matter of Disciplinary )  
Proceedings against )

CLAIRE SHEVITZ )  
t/a MARTINITZ TAVERN )  
95 West End Avenue )  
Long Branch, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-20, issued by the City )  
Council of the City of Long Branch. )

-----  
Julius J. Golden, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

At the hearing herein, licensee pleaded non vult to a charge alleging that on February 4, 11-12, 18 and 19, 1966, she conducted the licensed place of business as a nuisance, viz., permitting apparent male and female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates alleged, the total patronage ranged from nine to twenty-six and that all of the patrons were apparent homosexuals, principally females.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective September 28, 1964, for sale to minors.

On the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals), the license will be suspended for sixty days (Re Charmac, Inc., Bulletin 1630, Item 2), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Moore, Bulletin 1659, Item 4), or a total of sixty-five days, without remission for the plea untimely entered at the hearing (Re Arahill, Bulletin 1646, Item 1).

Accordingly, it is, on this 15th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-20, issued by the City Council of the City of Long Branch to Claire Shevitz, t/a Martinitz Tavern, for premises 95 West End Avenue, Long Branch, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. Monday, March 21, 1966, and terminating at 3:00 a.m. Wednesday, May 25, 1966.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1671

APRIL 28, 1966

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New Jersey State Library

alcoholic beverages on the licensed premises. Therefore, I recommend that the licensee be found guilty of the charge preferred herein.

In view of the fact that the licensee has no prior record of suspension, it is further recommended that the license be suspended, because of the violation herein, for a minimum of twenty days. Re Lekas and Paroby, Bulletin 1659, Item 12.

### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 16th day of March 1966,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Mullica to Raymond Synakowski, t/a White House Tavern, for premises 349 White Horse Pike, Mullica Township, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Wednesday, March 23, 1966, and terminating at 3 a.m. Tuesday, April 12, 1966.

JOSEPH P. LORDI  
DIRECTOR

#### 9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 20 DAYS - EFFECTIVE DATE OF SUSPENSION DEFERRED.

In the Matter of Disciplinary Proceedings against

172 CORP.

t/a FORT PITT CAFE

170 South New York Avenue

Atlantic City, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Atlantic City.

-----  
Angelo D. Malandra, Esq., Attorney for Licensee.  
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

"1. You failed to file with the Board of Commissioners of the City of Atlantic City, within ten days after the occurrence hereinafter stated, written notice of change of facts set forth in your answer to Question No. 31 in your application dated June 11, 1963 filed with the Board of Commissioners of the City of Atlantic City, upon which you obtained your 1963-64 plenary retail consumption license, such change being that, on or about June 24, 1963, you agreed to permit Harvey Braverman to retain all the profits

derived from your licensed business after payment to you of a weekly fee; in violation of R.S. 33:1-34.

"2. You failed to file with the Board of Commissioners of the City of Atlantic City, within ten days after the occurrence hereinafter stated, written notice of change of facts set forth in your answer to Question No. 31 in your application dated June 10, 1964 filed with the Board of Commissioners of the City of Atlantic City upon which you obtained your 1964-65 plenary retail consumption license, such change being that, on or about June 27, 1964, you agreed to permit John Boyer to retail all the profits derived from your licensed business after payment to you of a weekly fee; in violation of R.S. 33:1-34.

"3. You knowingly aided and abetted the following persons, during the following periods to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses: Harvey Braverman from on or about June 24, 1963 to on or about September 3, 1963, and John Boyer from on or about June 27, 1964 to on or about September 8, 1964; in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges. In addition, reports of investigation disclose that the unlawful situation has been corrected by its discontinuance with respect to the 1965-66 license.

Report of recent inspection discloses that the licensed business is not presently being conducted and that it is strictly a summer operation with the premises usually opened for business the third week in June and closed in the middle of September of each year.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective September 14, 1959, for sale to minors.

The prior record of dissimilar violation occurring more than five years ago disregarded, but the facts and circumstances as well as the plea entered considered, the license will be suspended for twenty days. Re The Sports Corner, Inc., Bulletin 1581, Item 7; Re Elvee Corporation, Bulletin 1651, Item 5.

In view of the current non-operation of the licensed business, no effective penalty can be imposed at this time. Hence, the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the licensed business has been fully resumed on a substantial basis.

Accordingly, it is, on this 17th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Atlantic City to 172 Corp., t/a Fort Pitt Cafe, for premises 170 South New York Avenue, Atlantic City, be and the same is hereby suspended for twenty (20) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1674

May 23, 1966

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7. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
 LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

BLUE NOTE, INC.  
 t/a BLUE NOTE )  
 707 Bangs Avenue )  
 Asbury Park, N.J. )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption )  
 License C-16, issued by the City )  
 Council of the City of Asbury Park )

ORDER

-----  
 Clancy & Hayden, Esqs., by Joseph A. Hayden, Esq., Attorneys  
 for Licensee.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 5, 11 and 18-19, 1966, it conducted the licensed place of business as a nuisance, viz., permitting apparent male homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question, the licensed premises was patronized by large numbers of apparent male homosexuals, i.e., on March 5 by seventy out of a total patronage of seventy-five, on March 11 by fifty-five out of a total patronage of fifty-eight and on March 18-19 by fifty-five out of a total patronage of sixty-five.

Absent prior record, on the basis of the facts appearing (simple congregation of a relatively large number of homosexuals) the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Charmac, Inc., Bulletin 1630, Item 2.

Accordingly, it is, on this 12th day of April, 1966,

ORDERED that Plenary Retail Consumption License C-16, issued by the City Council of the City of Asbury Park to Blue Note, Inc., t/a Blue Note, for premises 707 Bangs Avenue, Asbury Park, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Tuesday, April 19, 1966, and terminating at 3:00 a.m. Monday, June 13, 1966.

JOSEPH P. LORDI  
 DIRECTOR



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1677

June 6, 1966

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New Jersey State Library

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1677

June 6, 1966

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE  
REVOKED.

In the Matter of Disciplinary  
Proceedings against

MURPHY'S TAVERN, INC.  
135 Mulberry Street  
Newark, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-461, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Newark.

-----  
Louis R. Cerefice, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Charges dated March 26, 1965 and May 19, 1965, respectively,  
were preferred against the licensee herein. The alleged violations  
in both charges were similar in nature and thus the initial charge  
hereinafter quoted will include the additional dates set forth in  
the subsequent charge.

Licensee pleaded not guilty to the following charges:

"During early morning hours of Saturday, March 13,  
Wednesday night March 17 into early morning hours of  
Thursday March 18, and during early morning hours of  
Sunday, March 21, 1965, and on Thursday night April 22,  
Saturday night April 24 and Friday night May 7 into  
Saturday morning May 8, 1965, you allowed, permitted  
and suffered your licensed place of business to become  
a nuisance in that you allowed, permitted and suffered  
persons who appeared to be homosexuals, e.g., males  
impersonating females, in and upon your licensed premises;  
allowed, permitted and suffered such persons to frequent  
and congregate in and upon your licensed premises; and  
otherwise conducted your licensed place of business in a  
manner offensive to common decency and public morals; in  
violation of Rule 5 of State Regulation No. 20."

(Hearing of this case took four days with 668 pages of  
transcribed testimony and argument.)

To attempt a detailed analysis of the testimony of the  
various witnesses would unnecessarily burden this opinion with  
much that is immaterial and irrelevant. I shall adhere strictly  
to the testimony adduced herein which, in my opinion, is pertinent

to the matter in issue.

Agent M testified that he and Agents C and T visited the licensee's place of business on March 13, 1965, arriving in the vicinity thereof at approximately 12:05 a.m., and immediately Agent C entered the premises followed about two minutes thereafter by Agent T and himself, remaining in the said establishment until 1:00 a.m.; that Frank Gudaitis (Frank) and Roland Gilman (Roland) were tending bar; that fifty to sixty male patrons were in the premises, of which about 90 per cent attracted his attention because a great many of them wore their hair in a fluffed pompadour style, wore "loud" shirts and bulky type sweaters, female slacks with a zipper on the side and loafers, and there was "a strong odor of perfume on them." Moreover, many of them wore female charm bracelets and watches with a small band ordinarily used by females; and wedding rings on their pinky fingers; when many of them walked, they were observed swishing their hips from side to side; they caressed and fondled each other and, when speaking, spoke in high pitched voices using such terms as "Sweetie" and "Bastard." Moreover, Agent M stated that from his observation of these patrons, he was of the opinion that "They appeared to be males impersonating females and they appeared to be, from their mannerisms and acts, homosexuals."

On March 21 shortly after 12:01 a.m., Agent M again, in the company of Agents C and T, visited the licensee's premises and upon entering observed approximately eighty-five male patrons in the place; that Frank and Abraham Hirschorn (also called "Al") were on duty as bartenders. Agent M further testified that from his observation, 75 per cent of the patrons appeared to be imitating females. Agent M described the dress and mannerisms of the persons in question as similar to those seen on the visit of March 13. Agent M further testified that he observed a male, subsequently identified as Gilbert, caress another male referred to as Brenda "about the waist and referred to him as Darling, Sweetie, and caressed him about the buttocks." He said that patrons seated at the bar held hands with one another, stared at each other and were "caressing each other and fondling each other about the neck", and that males, while walking in his vicinity, were seen "goosing each other about the buttocks", and that an "effeminate giggle" could be heard. Agent M also stated he heard Agent C say to Frank that it was not safe in the premises as he had been grabbed by the buttocks ten times but Frank made no response. Agent M was of the opinion that as a result of his observations of the said patrons' attire, mannerisms and demeanor, they were apparent homosexuals. Agent M said that he and his two fellow agents identified themselves to Frank and Hirschorn and then to patrons who appeared to them to be homosexuals. He stated that he spoke to Hirschorn, who was an officer of the licensee corporation, in the presence of Agents C and T and advised him that a violation had taken place on the licensed premises because of the apparent homosexuals frequenting the place. He pointed out several of the apparent homosexuals and Hirschorn stated, "What am I going to do? What can I do? Can't we straighten this out?"; that when he identified himself, many of the patrons quickly departed from the premises.

On cross examination, Agent M testified as to the extent of his education and that he had never had any training with respect to psychology or psychiatry. The attorney for the licensee engaged in extensive cross examination in an attempt to discredit the testimony of Agent M but Agent M testified substantially to his testimony given on direct examination.

Agents C and T testified as to the conditions on the licensee's premises on both March 13 and 21 and corroborated the testimony given by Agent M with reference to those dates.

In addition, Agents C and T testified with regard to their visits at the licensed premises on March 17 and early morning of March 18, describing the mannerisms and attire of 75 per cent of the patrons who, in their opinions, from their actions and dress were apparent homosexuals. Agent C testified that while ordering a drink, he remarked to Frank, "Looks like the only straights in the place here are me, you and Al", and in reply Frank said, "You're so right, fellow, one hundred per cent right." This conversation was verified by the testimony of Agent T.

Agent B testified that on April 22, accompanied by Agent Ca, he entered the licensee's premises at 9:05 p.m. and left at 10:20 p.m. He stated that he observed various groups of male patrons, several of which attracted his attention, especially a group of six or seven patrons who by their actions and demeanor did not appear to be normal males. He described them as using a limp wrist movement when speaking or drinking, having an effeminate gait and, during their conversation, speaking in falsetto, lispy tones of voice. Furthermore, seated several stools to his right was another small group of patrons discussing their hairdressers. It was Agent B's opinion from his observation of these persons that they were apparent homosexuals. Moreover, these persons would bounce on the stools in time with the music and sing songs to themselves while rolling their eyes. One of the persons in question was referred to as Jules. The bartenders on this occasion were called Frank and Roland.

Agent B testified that in the company of Agent Ca, he visited the licensee's premises on April 24 when the bartenders were Frank and a person called Al. At least fifty per cent of the patrons attracted Agent B's attention because of their demeanor, their mannerisms and actions being similar to those which he described as occurring on the previous visit. He observed a man called Sebastian enter the premises and as he did so, two of the apparent homosexuals ran over and gave him a hug and, when Sebastian reached the far side of the bar, another apparent homosexual got up and gave him his seat. Sebastian then crossed his legs and fluffed his hair and rolled his eyes.

Agent B testified that he and Agent Ca again visited the licensee's premises on May 7 and at one time when Agent Ca went to the men's room, Jules, who had been seen on prior occasions, came over to him and asked him if he (Agent B) and his buddy (Agent Ca) were lovers; that Agent B stated they definitely were not as both were very straight; Jules then stated he had the "hots" for his buddy and offered to make love to him. Thereafter when Agent C rejoined him (Agent B) at the bar, he related to him what Jules had stated and Jules then leaned over and asked Agent Ca if Agent B had told him what he (Jules) had said. Agent Ca nodded in agreement and Jules remarked, "I said it and I'm glad. It took me three weeks", and then he blew a kiss to Agent Ca." Thereafter, according to Agent B's testimony, he spoke to Frank concerning the gay crowd there, but Frank just smiled and shrugged and then served the agents their drinks. As Roland came to the front of the bar, Agent B testified that he called to him and remarked concerning the gay crowd and in response thereto Gilman stated, "Oh, they're happy. They're having a good time. They don't bother anyone." At this, Agent B testified he said to Roland, "They're having too good a time" and continued, "One wants to make love to my buddy." When

Agent B identified Jules as the person, Roland immediately stated to Jules in a loud voice, "What did you do?" When Jules answered that he didn't do anything, Roland spoke to him in a very low voice and Jules and a person who appeared to Agent B to be a homosexual seated next to Jules, got up and left. At this time the agents identified themselves to Roland. The first thing that Roland said, according to the testimony of Agent B, was "I knew who you were the minute you started asking questions." Immediately, according to Agent B, "there was quite a mass exodus to the front door and within two minutes the crowd had narrowed down to thirty patrons from a height of about sixty." Agent B stated that the greater part of the patrons, because of their actions, were, in his opinion, apparent homosexuals.

On cross examination the licensee's attorney inquired as to the extent of Agent B's education and whether or not he had any special training with respect to psychology or psychiatry, to which the agent stated that he had not. Agent B admitted to Roland that he could not tell whether a person was actually a homosexual. The attorney for the licensee cross-examined Agent B extensively with regard to the patrons, but in response to these questions, he affirmed the information given during direct examination.

Agent Ca also testified concerning his visits to the licensee's premises on April 22, April 24 and May 7 and the facts related by him concerning conditions in the licensee's premises substantially corroborated those given by Agent B. Lengthy cross examination failed to change the information given by Agent Ca in his direct examination.

Roland Gilman testified that he is the secretary of the corporate licensee and that, so far as he could recollect, with the exception of March 17 he was on duty on the various dates set forth in the charge. His testimony disclosed that on March 13, there were forty to forty-five patrons in the establishment and from his observation none wore charm bracelets or had their hair in a "fluffy style"; That the average male customer "wears Ivy League, denims, sport shirts, some shirts and ties and jackets"; that on that particular evening, he did not notice anything unusual concerning the gait of the patrons or concerning their conversation. Furthermore, on the other nights in question while he was on duty, he did not notice anything unusual concerning any of the patrons. Roland admitted knowing Jules but testified that he never observed anything unusual concerning his actions. He also said he is acquainted with Sebastian and recalled the time when Sebastian came into the premises and was greeted by his friends. Sebastian, according to Roland, had undergone a serious operation and when he came into the bar many people were glad to see him. He also recalled a conversation with Agent B concerning the gay crowd of people and he (Roland) remarked, "Of course everybody's happy and gay. That's what a bar is for, for people to enjoy themselves. I don't understand that." He recalled a subsequent conversation with Agent B concerning Jules and denied his (Jules') doing anything wrong. After the agents identified themselves and advised him that the licensee was being charged with homosexuals congregating in the premises, Roland said there were no homosexuals on his premises. He denied that Sebastian was a homosexual but said he might be termed "a little sissy."

On cross examination, Roland stated that he did not have any specific recollection of the various dates in question, but his testimony was based solely on the usual crowd who patronized the licensed premises. When questioned as to what may have happened in the licensed premises on March 13, Roland said that his recollection was "Just that I worked and served drinks."

Manuel Fernandez testified that he was in the licensee's premises on March 17 as well as other nights set forth in the charges and recognized Agents C, M and T, but at no time did he observe anyone unusually dressed in the establishment. He further denied that anyone wore female slacks with a zipper in the back, swished and swayed as they walked, or any of them making advances by fondling other male patrons. Moreover, he never heard any words of endearment directed by one patron to another. Specifically with reference to March 17, Fernandez testified many of the patrons wore green ties, sweaters and "Erin Go Bragh" buttons. In fact, he stated this was the only unusual thing that he observed. Moreover, on all his visits to the licensed premises, he never saw anything which in any way suggested that the establishment was conducted other than in a proper manner.

James Evans testified that he was at the licensee's premises on March 17, arriving thereabout 8:00 p.m. and leaving about 12:30 a.m., and never observed any conduct on behalf of the patrons which in any manner might be criticized. In fact, he stated he stops in quite often at the licensee's establishment and although most of the time he sits by himself, he occasionally converses with the bartenders.

Abraham Hirschorn testified that he is the president of the corporate licensee and also tends bar in the licensed premises. He stated that he was on duty as bartender on March 17, also on March 20 and 21. However, on April 22 and 24, he was out of the state. He said he returned to Newark on April 27. In substantiation of his claim that he was not in the licensed premises on April 24, he presented certain receipted bills from a hotel in Florida and also from a garage where he had repairs done to his car. Hirschorn stated that in the center of the bar of the licensed premises is a "gondola" six feet in length, four feet in width and six and a half feet in height, whereon liquor and snacks are kept. He stated it is impossible for anyone to see a person who might be seated directly across the bar. On March 17 there were about forty to fifty patrons and that evening he was assisted as bartender by Frank. He contends that he observed nothing unusual about the dress or mannerisms of the patrons, except that some wore a green tie, green button or green hat because of it being St. Patrick's Day. He denied that any patrons wore female attire or acted other than as normal persons. Hirschorn claimed that on March 20 probably fifty-five or sixty patrons were in the establishment and there was nothing unusual about their dress or mannerisms. Furthermore, Hirschorn testified that no one ever complained about the alleged conduct of patrons. He denied that at any time he took a police club from under the bar and threatened any of the patrons because of being engaged in horse play. Moreover, he emphatically denied that at any time he had suggested to Agent M to straighten out the matter.

Harry H. Farb testified that he is a physician and has had long experience as a psychiatric consultant. In his opinion, Dr. Farb stated that observation of outward manifestation or outward conduct alone of a person is not sufficient to determine that a person is a homosexual. However, a group of persons displaying all those manifestations would possibly raise a question in his mind as to their normality.

Donald Ortel, a salesman, testified that he frequents the premises, being there on March 17, 1965. He was also in the premises on March 20 and 21 and also May 7. On his various visits to the establishment, he never saw anything unusual about the attire, mannerisms or conduct of the patrons in the place.

Frank testified that he was on duty as bartender on March 17, 18, 21, April 22 and 24 and May 7 and 8. He further testified that at no time did he see any of the patrons improperly attired, use any terms of endearment, or conduct themselves improperly on the premises. He also denied ever hearing the agents question him about the type of patrons in the licensed premises as he could not recall any conversation whatsoever with any of the agents. He said he does not assume any authority and, if anything arises, he refers it to the boss on duty with him at the time. On cross examination he stated that he did not know what was meant by homosexuality or ever heard of a person being termed a fag or fairy. Later Frank recalled that someone explained to him what constituted a homosexual.

The testimony of the witnesses produced by the Division and that given by the witnesses for the licensee is quite conflicting. On the one hand, we have five agents visiting the licensee's premises on numerous occasions and testifying as to their observations with reference to the conduct and mannerisms of the male patrons. The agents related in detail the effeminate characteristics of a large percentage of the said patrons on each visit to the licensee's establishment. From the description given of these patrons, it is quite obvious that, by their attire and conduct, they did not behave as normal males. These agents were at the licensee's place of business on specific assignments to observe what actually took place. After each visit notes were made of their observations and later a report was filed with their superior officer.

On the other hand, the two officers of the corporation and Frank, the bartender, denied that anything unusual ever occurred in the premises. Frank denied that he had engaged in conversation with any of the agents. Dr. Farb testified that mere observation of a person was not sufficient to determine that he was actually a homosexual. However, he did agree that a group of persons who acted like those described, wore female jewelry and other apparel usually worn by females, would arouse suspicion in his mind.

The evidence presented may have failed to prove that the described patrons in fact were homosexuals but it adequately disclosed that they had the conspicuous guise, demeanor, carriage and appearance of such personalities. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient. See Paddock Bar Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405. Female garb is not necessary for a finding that a person is an apparent homosexual. Re Rutgers Cocktail Bar, Bulletin 1133, Item 2. The testimony given by the agents in this case, without a doubt, established that the males in question, by their characteristics, conduct and mannerisms, were impersonating females and were persons who appeared to be homosexuals. As was stated by the Director in Jo-Stem Corporation, Bulletin 1625, Item 2:

"The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been consistently held that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of Regulation No. 20."

However, in the case herein, I am satisfied from the testimony of Agents B and Ca that Jules actually did make overtures to Agent Ca for improper purposes.



In Murphy's Tavern, Inc. v. Davis, 70 N.J.Super. 87 (App. Div. 1961), the court stated:

"In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J.Super. 405 (App.Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J.Super. 449 (App. Div. 1951)."

See also Carelis v. Division of Alcoholic Beverage Control (App.Div. 1961), not officially reported, reprinted in Bulletin 1430, Item 1.

After a careful review of all the evidence, including the testimony of the agents, the officers and bartenders of the licensee, the psychiatrist and the patrons who testified on behalf of the licensee, and the written argument of the attorney for the licensee, I find as a fact that the Division has established the truth of the charges by a fair preponderance of the believable evidence. I therefore recommend that the licensee be found guilty of such charges.

The licensee has a previous record of suspension of license (1) by the municipal issuing authority for twenty days effective March 15, 1954, for sale to intoxicated persons, (2) by the Director for sixty days effective July 18, 1961, for permitting apparent homosexuals on the premises (Re Murphy's Tavern, Inc., Bulletin 1374, Item 2; affirmed Murphy's Tavern, Inc. v. Davis, 70 N.J.Super. 87, reprinted in Bulletin 1395, Item 3; Re Murphy's Tavern, Inc., Bulletin 1405, Item 7), (3) by the municipal issuing authority for forty-five days effective September 16, 1961, for permitting apparent homosexuals on the premises and hindering investigation, and (4) (following change of stockholders and Officers in January 1963) by the Director for fifty-five days effective April 21, 1964, for permitting apparent homosexuals on the licensed premises. Re Murphy's Tavern, Inc., Bulletin 1563, Item 4.

With respect to any penalty to be imposed herein, there should be considered not only the previous record of the licensee of suspension for similar violation, but also the fact that the activities of April 22, 24 and May 7-8, the subject of the second charge, occurred after the first charge had been preferred on March 26 with respect to the activities on March 13, 17-18 and 21.

Under all of the circumstances appearing herein, revocation of the license is warranted. Re Kaczka, Bulletin 1126, Item 3; Re Butler Oak Tavern, Bulletin 1055, Item 1; affirmed Butler Oak Tavern v. Division of Alcoholic Beverage Control, 36 N.J.Super. 512; affirmed id. nom. 20 N.J. 373; Re Club Tequila, Inc., Bulletin 1570, Item 1. Cf. Re Brennan, Bulletin 113, Item 1. Thus, it is further recommended that the license herein be revoked.



### Conclusions and Order

Exceptions to the Hearer's report, with supporting argument, were filed pursuant to Rule 6 of State Regulation No. 16.

Several of the exceptions, read together, seem to argue as follows: (a) the agents were not professionally qualified to determine the apparent homosexuality of the patrons in the licensed premises, (b) "in effect" the Hearer made no determination that the patrons were apparent homosexuals but, rather, "it was the agents who made that decision", (c) the Hearer "completely ignored" the testimony of the psychiatrist Dr. Farb, produced on behalf of the licensee, as well as other "disinterested witnesses", (d) the congregation of apparent homosexuals herein, within the present contemplation of "mores and customs", "did not offend public morals, safety and welfare" and (e) in any event, the congregation of apparent homosexuals is not a nuisance as contemplated under Rule 5 of State Regulation No. 20, or the Alcoholic Beverage Law.

The dispositive answers to the above contentions were convincingly made in many of our adjudicated cases both in the Division and in our appellate courts.

It has been firmly established, both in law and logic, that the agents, who have had many years of investigative experience in similar matters, are qualified to form an opinion as to the apparent homosexuality of patrons based upon their observations of the conspicuous guise, demeanor, carriage, appearance and conduct of the said patrons.

It is no more necessary for these agents to have medical or psychiatric training than it is for them to have a medical background to form an opinion with reference to an apparently intoxicated person. Such admissible opinion may be based on common observation and requires no special knowledge or skill. Castner v. Sliker, 33 N.J.L. 95; McHugh v. Hasbrouck Heights, 144 Atl. Rep. 799; Re Subar, Inc., Bulletin 1586, Item 2.

As the Hearer emphasized, the agents testified only as to apparent homosexuality. And, if the testimony of the agents was believable, as the Hearer found it to be, of the appearance, demeanor and conduct of these patrons, such evidence squarely meets the required measure defined in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405; cf. Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App.Div. 1961).

My analysis of the testimony of the psychiatrist Dr. Farb satisfies me that, while his main premise was that a person could not be conclusively identified as an actual homosexual merely by outward appearance, nevertheless he agreed with the appositional thesis as stated in the Hearer's report "that a group of persons who acted like those described, wore female jewelry and other apparel usually worn by females, would arouse suspicion in his mind" and "raise a question in his mind as to their normality." Thus the sense of his testimony as it relates to the apparent homosexuals coincides with and supports the testimony of the Division agents.

As the court stated in Paddock (at p. 408):

"True, in the present proceeding the evidence was not of the probative quality to establish beyond uncertainty that the specified patrons of the tavern were in actuality homosexuals...."

"Here, a distinguishable understanding of the accusation is imperative. The appellant was charged with the misconduct of permitting persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals habitually and in inordinate numbers (on one occasion, as many as 45) to congregate at the tavern....

"Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud."

Cf. Re Murphy 's Tavern, Inc., Bulletin 1374, Item 2.

Significantly, in the matter sub judice, patently indecent conduct was engaged in by these apparent homosexuals, such as caressing "about the buttocks", fondling of males by other males, "goosing each other about the buttocks." (Agent C complained to the bartender that he personally had been grabbed by the buttocks ten times while in the premises.)

Such congregation of the apparent homosexuals, together with the acts and conduct attributed to them by the Division agents, are clearly against the public welfare. The licensee has extended an open invitation to these persons to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, and being exposed to these conditions, may well be adversely affected. Re Hoover, Bulletin 1521, Item 1 (aff'd App.Div. Nov. 22, 1963, opinion not approved for publication).

It is thus perfectly obvious that the type of activity reflected in the record is a violation of our basic moral concepts, even under the most liberal view. It is appropriate to quote the language in In re Schneider, 12 N.J.Super. 449 (App.Div. 1951):

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra.

I agree with the Hearer that the activity on the licensed premises herein, as charged, constitutes a nuisance and gives eloquent force to the need for the applicable rule. Any relaxation of such rule can only encourage a pattern of behavior offensive to good taste and established moral standards.

One further comment with respect to the testimony of licensee's witnesses. I agree with the Hearer that their testimony as it specifically relates to their observations and knowledge of the proscribed activity is highly incredible and unworthy of belief.

The index to the said testimony is perhaps most clearly revealed by the statement of Hirschorn, a corporate officer. When Agent M pointed out several of the apparent homosexuals to him, Hirschorn

pleaded, "What am I going to do? What can I do? Can't we straighten this out?"

Counsel in his final exception contends that the penalty recommended by the Hearer was excessive and "that revocation under these circumstances is not only extremely unjust, extremely harsh, but extremely unfair." With this I cannot agree. The record discloses that the licensee has an adjudicated record of past offenses which includes similar violations. In addition thereto it permitted apparent homosexuals to congregate on the licensed premises during the period when charges were pending at the Division alleging similar violations. Such conduct on the part of the licensee evinced an open and willful disrespect for the law and rules and regulations of this Division. Cf. Re Butler Oak Tavern, Bulletin 1055, Item 1, aff'd Butler Oak Tavern v. Division of Alcoholic Beverage Control, 36 N.J. Super. 512; 20 N.J. 373; reprinted in Bulletin 1079, Item 1, Bulletin 1096, Item 1.

"The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement." Kravis v. Hock, 135 N.J.L. 259 (Sup.Ct. 1947), reversed on other grounds, 136 N.J.L. 161 (E. & A. 1947). In reality, a license to vend alcoholic beverages is merely a temporary permit or privilege to pursue an occupation otherwise illegal. Voight v. Board of Excise, 59 N.J.L. 358 (Sup.Ct. 1896); Drozowski v. Sayreville, 133 N.J.L. 536 (Sup.Ct. 1946); Takacs v. Horvath, 3 N.J. Super. 433 (Ch.Div. 1949); it must be carefully supervised and should be conducted by reputable people in a reputable manner. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). See In re 17 Club, Inc., 26 N.J. Super. 43.

The flagrant and repeated violations on the part of this licensee have unmistakably demonstrated that it is not fit to hold a license. Under the circumstances I have no alternative but to revoke.

I have examined each of the other exceptions and find them to be without merit.

After careful consideration of the entire record, including the transcript of testimony, the Hearer's report, all of the exceptions and argument filed with reference thereto, I conclude that the Division has established its case by the overwhelming preponderance of the credible testimony. Therefore I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 19th day of April 1966,

ORDERED that Plenary Retail Consumption License C-461, issued for the 1965-66 licensing period by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Murphy's Tavern, Inc., for premises 135 Mulberry Street, Newark, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety <sup>Kremer</sup>  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1685

July 27, 1966

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New Jersey State Library

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1685

July 27, 1966

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
PRIOR SIMILAR RECORD OF CORPORATION WITH COMMON STOCKHOLDER -  
LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Val's Bar, Inc., )  
t/a Val's Bar, )  
114 S. New York Ave., )  
Atlantic City, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption )  
License C-225, issued by the Board )  
of Commissioners of the City of )  
Atlantic City. )  
----- )

Jacobson & Silverman, Esqs., by Louis C. Jacobson, Esq.;  
Norman Alexander Oshtry, Esq. and Murray Powlen, Esq.,  
Co-Counsel; Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"During the early morning hours of Sunday July 25 and  
Saturday July 31, on the nights of Friday, August 6 and  
Thursday, August 19 and on Friday night September 10 into  
early morning hours of Saturday, September 11, 1965, you  
allowed, permitted and suffered your licensed place of business  
to be conducted in such manner as to become a nuisance in that  
you allowed, permitted and suffered persons who appeared to  
be homosexuals, e.g. males impersonating females in and  
upon your licensed premises, allowed, permitted and suffered  
such persons to frequent and congregate in and upon your  
licensed premises; and otherwise conducted your licensed  
place of business in a manner offensive to common decency and  
public morals; in violation of Rule 5 of State Regulation  
No. 20."

The factual setting for the Division's case was devel-  
oped through the testimony of six ABC agents. Acting upon specific  
assignments to investigate alleged homosexual activities at the  
above licensed premises, they visited the said premises on the  
early mornings of July 25 and July 31, on the nights of Friday,  
August 6 and Thursday, August 19, and on Friday night September 10  
into the early morning hours of Saturday, September 11, 1965.

On July 25, 1965, at about 12:05 a.m., Agents G and M  
visited the said premises and remained there until 1 a.m. They  
then left the premises and returned at about 3 a.m., at which  
time they remained until 3:30 a.m. On both visits they noted  
that the premises were packed to capacity with about one hundred

fifty patrons, all of whom were males, with the exception of "two or possibly four [females] at the most." About ninety-five per cent. of the patrons attracted their attention because they appeared to be males impersonating females, or homosexuals. They made this observation because these patrons had high-pitched voices, effeminate mannerisms; almost all were dressed in "tight chino pants, the short Bermuda, very tight Bermuda pants, the bulky knit sweaters." The agents also noted that, when they spoke in these high-pitched and lispy voices, they made such comments as "Hon, Sweetie, et cetera." There was also a very strong odor of perfume which was emitted from these persons.

The next visit to these premises was made by Agents D and G on Saturday, July 31, 1965, at about 12:45 a.m. On this occasion there were about seventy male patrons but no female patrons. About ninety per cent. of them attracted the attention of the agents because they appeared to be homosexuals. The agents further noted that they were conversing in groups, and their appearance was described as follows: While sitting at the bar they had their "elbows tucked in, puffing their cigarettes effeminately, holding it at the end of their fingers, using a limp wrist action, sipping their drinks, rolling of the eyes when in conversation or perhaps just looking at another one endearingly. On occasion they touched one another." They wore tight-fitting trousers and bulky knit sweaters. When walking about they seemed to swish, moving their hips from side to side. They wore sneakers, loafers, and beach sandals. They frequently addressed each other as "Dear and Sweetie."

The next visit to the premises was made on August 6, 1965, at about 9:45 p.m. by Agents D and R. On this occasion the agents observed that at the height of activity there were fifty-five males and six females; of the fifty-five males about seventy per cent. of them attracted their attention because they appeared to be males impersonating females, or homosexuals. The basis for their conclusion was as follows: The patrons sat in groups or in couples conversing with each other in high-pitched, lispy tones of voice. Their clothing in some instances consisted of "a bulky mohair-type sweater, tight-fitting trousers, sandals or sneakers or perhaps oxford shoes, loafers." They used a limp-wrist action, sipping their drinks; and in conversation they fluttered and rolled their eyes at each other. When walking, their hips would swish from side to side in an effeminate manner.

Agents H and S, pursuant to assignment, next visited the licensed premises on August 19, 1965, at about 9:20 p.m. and remained on the premises for about two hours. During this period they noted that there were about twenty to twenty-five patrons, of whom all were male, except for two females. Of these about twenty attracted their attention because they appeared to be males impersonating females, or homosexuals. On this occasion the males "wore sandals or white sneakers with no socks, very tight-fitting pants, bulky mohair sweaters with no T-shirt underneath. Several of the males wore their hair long and apparently combed up and around the back rather than parted as most males would." Their actions and mannerisms were "affected and feminine in appearance in that the limp-wrist motions, the tucked-in elbow, the small steps and swishing or rolling gait to exaggerate hip motion was used as they walked about the premises." Endearing terms such as "Dear, Sweets and Darling" were frequently used, and one male specifically referred to another male as "Darling."

Agent S engaged in conversation with the bartender and asked him where all these "fags" come from. Replied the bartender, "Beats me. I don't know, but I really wish they would go

away. It gets to be kind of a drag after a while."

The final visit to these premises was made by Agents D and H on Friday, September 10, 1965, at approximately 10:15 p.m., and the agents remained at the premises until 1:45 a.m. on Sunday, September 11. Upon entering the premises they noted that there were two bartenders (subsequently identified as John Schultz, who was the acting manager of these premises, and John Gunzer), who were serving approximately twenty male patrons at the bar. The patronage increased so that at the height of activity there were sixty male patrons and two female patrons. The two female patrons appeared to be lesbians, while over ninety per cent. of the males appeared to be males impersonating females, or homosexuals. Some of these apparent homosexuals were dressed in very tight-fitting chino pants, bulky mohair sweaters, brightly colored sports shirts and white sneakers. Several of these persons appeared "to wear powder on their face to lessen any effect of a day-old beard. I noticed that at least two of these males obviously had had their eyebrows plucked and repencilled with eyebrow pencil. A smell of perfume. By this I don't mean after-shaving lotion. Perfume, female perfume, was very obvious."

Agent H described their actions and conduct as follows: They took very small steps; they "moved their hips in rather an exaggerated motion and kept their hands very tight to their sides although often stood with, say, one hand on the hip while walking." He noted also their limp-wrist motion while talking or drinking; they held their cigarettes in a rather delicate fashion with the smaller two fingers raised. They would occasionally touch the face of the other person to whom they were speaking; "their voices were very affected, in that they were obviously trying to imitate a female inflection or feminine inflection of voice." Such terms as "Dear and Sweetie" when referring to other males were used quite frequently. There was also occasional hand-holding and frequent blowing of kisses from one male to another which would be received by the recipient in a girlish manner by lowering or fluttering the eyelashes and smiling.

At approximately 1 a.m. Agent H approached a bearded male person who was seated near the door. It was assumed that he was an employee because he was seen ejecting or barring the entry of several persons. This person (later identified as C. Wallace O'Donnell) was a bouncer employed by the licensee. Agent H opened the conversation by saying, "My friend and I really goofed tonight. We came here looking for girls." Replied O'Donnell, "You sure did. You'll never find any in here." And then, "Well, why did you stay here? How come you stuck around so long?" The conversation continued with Agent D joining in and asking, "Where do all these queers come from?" O'Donnell then said to Agent D, "Tell me, were you getting that creepy feeling?" Agent D answered, "Yes, I was. I really felt surrounded over there with all those fags." Replied O'Donnell, "I know just how you feel, I feel the same way myself sometimes being surrounded by these guys. That's why I don't mind sitting over here by the door." O'Donnell then added, "Have a seat. It's a pleasure talking to a couple of straight guys for a change." He was then asked where all these people come from and he responded, "They come from all over, Montreal, Florida, New York. This is practically a headquarters for these guys." O'Donnell then explained that his duty was to keep out "the more apparent stewed bums, the drunks that tried to gain entry, two of whom he had already ejected." He further added, with respect to the licensee's operation, "I guess they've got a good thing going and they want to keep it." O'Donnell also explained that the main reason he got the job, beside the fact that he was tall, was that he had a full beard and he was informed that a straight male wearing a full beard would attract homosexuals to these premises. During the



course of their conversation with O'Donnell they were interrupted when O'Donnell barred entry to some obviously intoxicated persons.

At about 1:30 a.m. on September 11 the agents identified themselves and explained to O'Donnell that it was a violation to permit the congregation of homosexuals on the premises. O'Donnell answered, "I knew that. I was aware of that." At this point a person, who identified himself as Thomas ---, approached the agents. He was a person about twenty-four years of age, built slenderly, had a fair complexion, blonde hair, and affected a high-pitched voice similar to those of the other male patrons. The agents informed him that the congregation of apparent homosexuals was a violation. Thomas --- said, "Oh dear, Mother has had it." He explained the "mother" as being a reference to the bar. Then he said, "What's wrong with being a homosexual? Everybody in here is one. In fact, I'm president of both societies."

Several minutes later, Mark Weintraub (the president of the corporate licensee) entered the premises and was apprized of the alleged violation. He then said, "Well, point out a homosexual to me and I will throw him out of here." When the agents called his attention to the fact that ninety-five per cent. of the patrons at that time appeared to be homosexuals, including the two females who were seated at the bar, he then said, "Well, maybe they are, but at least they're very well behaved," and added, "We don't allow any drag in here ... we don't allow any fooling around."

The only witness produced on behalf of the licensee was Doctor Wardell B. Pomeroy, a practicing psychologist and former Director of Field Research at the Kinsey Institute, Bloomington, Indiana. Dr. Pomeroy discoursed in detail on the nature of homosexuals and homosexual behavior based upon his studies of sexual conduct. He suggested that there are changing attitudes toward the homosexual, and "we find a more acceptance attitude in 1966 than we did in 1946. Our culture appears to be changing in the direction of being more accepting of the homosexual." In detailing the characteristics of the homosexual he described their recognized manifestation as "the way they dress, the way they move their hands and feet, the way they walk, their voice and so on." He also admitted that, if he saw two males looking into each other's eyes or walking into a tavern, holding hands lightly or walking with a swishing or swaying movement, these also would be identifiable manifestations. He was then asked the following:

"Q And if you were to go into a tavern or into any room or into any place and if you saw a large number of these persons with these identifiable manifestations, would you come to an opinion that they were apparent homosexuals?

A I think I would, yes."

He then emphasized that in his opinion the congregation of these homosexuals in a tavern would be "of benefit to the surrounding community, to the culture, to keep them from cruising on the streets, in the parks ...," explaining that "these men are going to be more likely to cruise in other places that might be more offensive to the public such as in toilets, in the subways, in parks, streets, and that this is a better solution to their need and interest in congregating together than any other solution we can think of;" adding that this was the best method of containing and controlling these individuals.



The psychologist agreed that the use of alcohol tends to make people more relaxed and less inhibited, and that it is likely that a heterosexual person who may have underlying homosexual tendencies, which are dormant, might have those tendencies come to the fore after imbibing alcoholic beverages. I then asked this witness the following question:

"The Hearer: Now, did I understand you correctly also, Doctor, to say that you would prefer that the homosexuals congregate in a tavern because, by so doing, they might not frequent places such as public toilets or parks or Turkish baths?

The Witness: I didn't include Turkish baths.

The Hearer: I believe you said bath. I don't believe you used the word Turkish. That's true. Did I understand you to say that, that this would be perhaps a substitute for their going to these other places?

The Witness: This is a possibility, yes.

The Hearer: And in that respect do you consider that it would be socially desirable, that they be permitted to congregate in taverns?

The Witness: Yes."

In further questioning this witness as to the effect that congregation of such homosexuals would have upon normal young people coming into the tavern, the psychologist said that they had a choice of either remaining or leaving; that, if they decided to remain, "perhaps they were amused, perhaps they were interested in this sort of behavior." He reasoned that, since these persons would have the alternative of either remaining or leaving, the effect of such congregation would not be socially undesirable.

As was pointed out hereinabove, the factual narrative and observations of the Division's witnesses remain uncontroverted and unchallenged by the licensee because no witnesses were produced to rebut such testimony. Thus the quantitative effect on the Division's testimony remains unchallenged and must be accepted as true. The only real challenge is as to the qualitative substance of such testimony, and valid legal conclusions to be drawn therefrom.

In a memorandum submitted by counsel for the licensee in summation, the following asserted arguments are raised in support of dismissal of the said charge: (1) that the charge was brought under the wrong rule of Regulation No. 20; (2) that there was no satisfactory evidence in the record to establish homosexuals were upon the premises; (3) even if there were such evidence, there is nothing in the law designating homosexuality as a crime; (4) there is no evidence in the records establishing the existence of a nuisance; (5) that the licensee's constitutional rights would be violated if it were required to prevent the congregation of homosexuals, and (6) that the licensee would be committing an illegal act by barring such persons from licensed premises.

In answer to these arguments it might be well to state certain applicable principles which have become well settled in the administration of the Alcoholic Beverage Law, and the conduct and supervision of licensed premises. The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the Alcoholic Beverage Act. In re Olympic, Inc., 49 N.J. Super. 299. A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585; Mazza v. Cavicchia, 15 N.J. 498. As the court said in Benedetti v. Trenton, 35 N.J. Super. 30, at p. 35:

"In the public interest, the right to prescribe the conditions under which intoxicants may be sold is practically limitless."

Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, at p. 52, said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

And as was pointed out in Re Polka Club Inc., Bulletin 1045, Item 6:

"Rigid enforcement of the regulations ... is essential to the preservation of decency and the protection of the public morals ...."

The fundamental answer to the asserted contention that there is no satisfactory evidence in the record to establish that homosexuals were upon the licensed premises is contained in the expressed opinion of the ABC agents, who have had a considerable background of experience in the investigation of charges of alleged homosexual activity; their testimony lends sufficient support to this charge. Their opinions can be compared to that of persons testifying as to their observations of apparently intoxicated persons. It has been consistently held by this Division and the courts that it is not necessary to be a doctor or medical expert in order to testify as to whether a person is apparently intoxicated. It is well-established that whether a man is sober or intoxicated is a matter of common observation, not requiring any special knowledge or skill. Castner v. Sliker, 33 N.J.L. 95; McHugh v. Borough of Hasbrouck Heights, 144 Atl. Rep. 799; Re Sullivan, Bulletin 1450, Item 4; Re Hoover, Bulletin 1521, Item 1, aff'd App.Div. Nov. 22, 1963 (not officially reported).

In fact, the expert witness for the licensee admitted that, on the basis of the description of these individuals given by the Division's witnesses, their conduct, mannerisms, dress and so forth, he would have concluded that these persons were apparent homosexuals. Additionally, the evidence is abundantly clear that the licensee's employees, including its president, knew that these premises were a hangout for these apparent homosexuals. Weintraub, according to the agent's testimony, felt that, as long as they behaved themselves, it was permissible to have them congregate; and O'Donnell, more elaborately, pictured these apparent homosexuals as being attracted to these premises from such places as Canada, New York and other distant places. It is obvious that under these circumstances the description given of these patrons by the Division agents, similarly identified by the licensee's own witnesses and reinforced by the admissions of the licensee's employees, unmistakably establishes without the necessity of specific pinpointing by the agents that there was a congregation of these apparent homosexuals.

One further point: It is not necessary to prove that these individuals were in fact homosexuals. The charge clearly delineated that there was a congregation of apparent homosexuals, which is sufficient to sustain the said charge.

As the court stated in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App.Div. 1957):

"If the evidence here failed adequately to prove that the described patrons were in fact homosexuals,

it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient."

Cf. Re Murphy's Tavern, Inc., Bulletin 1374, Item 2.

In this connection it might be well to note that the court stated in Murphy's Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1961), 70 N.J. Super. 87 (reprinted in Bulletin 1395, Item 3):

"It should not be thought that the court is callous to the problem of the homosexual, medically or socially. The public interest in tight control over the liquor business, In re Olympic, Inc., 49 N.J. Super. 299, 306 (App.Div. 1958), certification denied 27 N.J. 279 (1958), involves, however, neither the curative approach of the physician nor the analytical view of the sociologist. The primary concern in this regard is maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded."

We next come to the matter of the congregation of these apparent homosexuals. This Division and the court have held that the congregation of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, *supra*. Such a result is justified by the Division's policy, supported in law and in its own long-term practice of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951), and Murphy's Tavern, Inc. v. Division of Alcoholic Beverage Control, *supra*.

The authority is well established for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been consistently held that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of State Regulation No. 20. As was stated in Re Hoover, Bulletin 1521, Item 1:

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge."

See also Carelis v. Division of Alcoholic Beverage Control, Bulletin 1393, Item 2 (aff'd by Appellate Division on Dec. 21, 1961, not officially reported, reprinted in Bulletin 1430, Item 1).

This is the significant reply to the contention of licensee's counsel that the charge should have been brought under Rule 4 rather than Rule 5 of State Regulation No. 20. The distinction here is the misconduct of permitting apparent homosexuals, as hereinabove described, to habitually and in inordinate numbers

(on several occasions as many as 150) congregate at the tavern. It is this proscribed activity which constitutes a nuisance within the contemplation of the rule. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, *supra*; Re Kaczka & Trobiano, Bulletin 1063, Item 1; Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2.

Furthermore, I must reject the contention of the licensee's witness that normal persons entering into licensed premises accommodating a large congregation of apparent homosexuals had the alternative of either remaining or leaving the premises; that, if they remained, they were probably amused or had some other reason for so doing. The fact is that such congregation and conduct, as described by the Division's witnesses, may have a harmful effect on some members of the public and, thus, are a threat to the safety and morals of the public; and these persons should not be required to make the alternative decision as to whether to remain or leave. The careful supervision of the liquor business in the public interest requires that it be free from any such immoral acts or conduct which are contra bonos mores. In re Schneider, *supra*. I consider as tenuous, useless and without merit this witness' thesis that, unless these apparent homosexuals are contained or controlled in a tavern, they might express anti-social acts in the public toilets, parks or bath-houses. The tavern is not the proper place to contain or control such persons within the concept of the Alcoholic Beverage Law for the obvious reasons as expressed hereinabove.

We pass to consider counsel's contention that the licensee's constitutional rights would be violated, and it would be committing an illegal act in refusing to sell or serve liquor to the congregation of such individuals. This argument was disposed of in Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5. In that case the Director cited Re Plaza Hotel-O'Leary, Bulletin 188, Item 9, to the effect that a tavern owner may not refuse service to an individual because of his race, creed or color or for some cause or reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude", citing Shubert v. Nixon Amusement Co., 83 N.J.L. 101 (Sup.Ct. 1912). It was held that a licensee has an absolute right to refuse to sell or serve liquor to an unlawful congregation provided such refusal is not based on race, creed or color. He further pointed out that "The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law ...", and further citing Re Rollka, Bulletin 142, Item 4:

"The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

He further cited State v. Lynch, 23 N.J.L.J. 45, wherein Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." The court said:

"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

See State v. Colgan (Sup.Ct. 1919), 92 N.J.L. 307.

The proposition that the congregation of apparent homosexuals may not be barred from licensed premises is frivolous,

and has most recently been rejected in Re Jo-Stem Corporation, Bulletin 1625, Item 2. To the same effect, see Re Kaczka & Trobiano, supra; Re V.M. & S., Inc., Bulletin 1345, Item 6; Re Bader, Bulletin 1073, Item 4.

I therefore conclude that the constitutional rights of this licensee have not been violated and that it would not be performing an illegal act in refusing to serve such patronage. Indeed, it would be acting in consonance with the Alcoholic Beverage Law in barring the congregation of apparent homosexuals.

The evidence sustains the conclusion that not only was this type of patronage not barred but was, indeed, encouraged, and these licensed premises appear to have gained quite a reputation far and wide as a place where such patronage was wholeheartedly welcomed.

After reviewing the entire record and the written argument of counsel, I conclude that the Division has established the truth of this charge by a fair preponderance of the believable evidence -- indeed, by substantial evidence -- and I recommend that the licensee be found guilty of said charge.

Although the licensee corporation has no previous record of suspension of license, the license then held by K & K Corp. for the same premises, in which Mildred S. Kusek (a 1% stockholder of the licensee corporation and holder of a purchase price security agreement) was the holder of five of eleven shares of stock, was suspended by the municipal issuing authority for twenty-five days effective February 8, 1953, for sale to minors and by the Director for fifty-five days effective October 6, 1964, for permitting apparent homosexuals on the licensed premises. Re K & K Corp., Bulletin 1588, Item 3.

It is therefore recommended that the prior record of suspension of license of K & K Corp. (to which the licensee corporation is linked by the stockholding and security interest of Mildred S. Kusek -- cf. Re Jervic, Inc., Bulletin 1603, Item 5; Re White Poodle, Inc., Bulletin 1530, Item 4; Re C.A.R. Corporation, Bulletin 1574, Item 8) for dissimilar violation in 1953 occurring more than five years ago be disregarded but that the prior record of suspension of license for similar violation occurring in 1964 within the past five years be considered, and that the license be suspended for one hundred twenty days. Re Charmac, Inc., Bulletin 1637, Item 1.

#### Conclusions and Order

Exceptions to the Hearer's report and argument thereto were filed by the licensee's attorney, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions had been considered in detail by the Hearer in his report and that they are without merit. Consequently, having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions.

Accordingly, it is, on this 9th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-225, issued by the Board of Commissioners of the City of Atlantic City to Val's Bar, Inc., t/a Val's Bar, for premises 114 S. New York Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1966, commencing at 7:00 a.m. Thursday, June 16, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Friday, October 14, 1966.

JOSEPH P. LORDI,  
DIRECTOR.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Mary Maione )  
t/a Jim's Tavern )  
Route #130 )  
Bordentown, N. J. )

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Bordentown. )  
----- )

CONCLUSIONS  
and  
ORDER

James F. McGovern, Jr., Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 20, 1966, she sold mixed drinks of alcoholic beverages to two minors, age 19 and 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a record of suspension of license by the Director for ten days effective May 31, 1966 (currently in effect and terminating at 2:00 a.m. June 10, 1966) for similar violation. Re Maione, Bulletin 1682, Item 6.

The prior record of suspension for similar violation within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Fun Fair Bowl, Bulletin 1625, Item 6.

Accordingly, it is, on this 8th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Bordentown to Mary Maione, t/a Jim's Tavern, for premises on Route #130, Bordentown Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Friday, June 10, 1966, and terminating at 2:00 a.m. Thursday, June 30, 1966.

JOSEPH P. LORDI,  
DIRECTOR.

3. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary Proceedings against )

172 Corp., t/a Fort Pitt Cafe, )  
170 South New York Avenue )  
Atlantic City, N. J. )

Holder of Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Atlantic City. )  
----- )

SUPPLEMENTAL ORDER

STATE OF NEW JERSEY  
Department of Law and Public Safety <sup>Kremer</sup>  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1685

July 27, 1966

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New Jersey State Library

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Friday, October 14, 1966.

JOSEPH P. LORDI,  
DIRECTOR.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against )

Mary Maione )  
t/a Jim's Tavern )  
Route #130 )  
Bordentown, N. J. )

Holder of Plenary Retail Consumption  
License C-7, issued by the Township  
Committee of the Township of )  
Bordentown. )  
----- )

CONCLUSIONS  
and  
ORDER

James F. McGovern, Jr., Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 20, 1966, she sold mixed drinks of alcoholic beverages to two minors, age 19 and 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a record of suspension of license by the Director for ten days effective May 31, 1966 (currently in effect and terminating at 2:00 a.m. June 10, 1966) for similar violation. Re Maione, Bulletin 1682, Item 6.

The prior record of suspension for similar violation within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Fun Fair Bowl, Bulletin 1625, Item 6.

Accordingly, it is, on this 8th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Bordentown to Mary Maione, t/a Jim's Tavern, for premises on Route #130, Bordentown Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Friday, June 10, 1966, and terminating at 2:00 a.m. Thursday, June 30, 1966.

JOSEPH P. LORDI,  
DIRECTOR.

3. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary  
Proceedings against )

172 Corp., t/a Fort Pitt Cafe, )  
170 South New York Avenue )  
Atlantic City, N. J. )

Holder of Plenary Retail Consumption  
License C-40, issued by the Board of )  
Commissioners of the City of Atlantic )  
City. )  
----- )

SUPPLEMENTAL ORDER



Angelo D. Malandra, Esq., Attorney for Licensee  
Morton B. Zemel, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

On March 17, 1966, I entered an order herein suspending the current license for twenty days because of the farming out of the 1963-64 and 1964-65 licenses and deferring the effective date of the suspension because it appeared that the licensed business was not then being conducted. Re 172 Corp., Bulletin 1671, Item 9.

Report of recent inspection discloses that the licensed business is now being conducted. Consequently, I am satisfied that the deferred suspension may now be imposed.

Accordingly, it is, on this 9th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Atlantic City to 172 Corp., t/a Fort Pitt Cafe, for premises 170 South New York Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1966, commencing at 7:00 a.m. Thursday, June 16, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Wednesday, July 6, 1966.

JOSEPH P. LORDI,  
DIRECTOR.

4. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND EQUIPMENT  
ON PREMISES - STILL, EQUIPMENT, ALCOHOL AND MOTOR VEHICLE USED  
IN CONNECTION WITH OPERATION ORDERED FORFEITED.

In the Matter of a Seizure on )  
April 13, 1966 of a quantity of )  
alcoholic beverages, still parts, )  
including two pumps, a motor, oil burner, )  
copper coil and one 1957 Ford sedan, in )  
a 2½ story frame building on Route 54, )  
2/10 mile east of Second Road, in the )  
Town of Hammonton, County of Atlantic )  
and State of New Jersey. )

On Hearing

CONCLUSIONS and ORDER

I. Edward Amada, Esq., Appearing for the Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapters 1 and 2, Revised Statutes of New Jersey and State Regulation No. 28, to determine whether nine containers of alcoholic beverages, still parts, including two pumps, a motor, oil burner and copper coil, and a 1957 Ford sedan, more particularly described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on April 13, 1966 in a 2½ story frame building on Route 54, 2/10 mile east of Second Road, in the Town of Hammonton, Atlantic County, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 and R.S. 33:2-5, no one appeared to oppose forfeiture of the seized property.

Kremer

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1695

October 10, 1966

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16. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1695

October 10, 1966

COURT DECISIONS - ONE ELEVEN WINES & LIQUORS, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL and LORDI, DIRECTOR - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-374-65

ONE ELEVEN WINES & LIQUORS,  
INC., a New Jersey corporation,

Appellant,

vs.

DIVISION OF ALCOHOLIC BEVERAGE  
CONTROL and JOSEPH P. LORDI,  
Director, etc.,

Respondents.

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Argued May 16, 1966 -- Decided August 9, 1966

Before Judges Goldmann, Foley and Collester.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Theodore S. Meth argued the cause for appellant  
(Messrs. Busch & Busch, attorneys).

Mr. Michael C. Rudolph, Deputy Attorney General, argued  
the cause for respondents (Mr. Arthur J. Sills, Attorney  
General, attorney).

The opinion of the court was delivered by

COLLESTER, J. A. D.

Appeal from Director's decision in Re One Eleven Wines  
& Liquors, Inc., Bulletin 1656, Item 5. Director affirmed. Opinion  
disapproved for publication.

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL TO APPELLATE DIVISION.

In the Matter of Disciplinary Proceedings against )

One Eleven Wines & Liquors, Inc. )  
111-113 Albany Street )  
New Brunswick, N. J., )

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of New Brunswick. )

-----  
Busch & Busch, Esqs., by Malcolm R. Busch, Esq., Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On December 27, 1965 I entered Conclusions and Order herein suspending the license for sixty days for permitting congregation of apparent homosexuals on the licensed premises. Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5.

Prior to the effectuation of the suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed my action on August 9, 1966. One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control and Lordi, Director (App.Div. 1966), not officially reported, recorded in Bulletin 1695, Item 1. Mandate on affirmance having now been received, the suspension may be reimposed.

Accordingly, it is, on this 2nd day of September, 1966,

ORDERED that the sixty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of New Brunswick to One Eleven Wines & Liquors, Inc., for premises 111-113 Albany Street, New Brunswick, commencing at 2 a.m. Monday, September 12, 1966, and terminating at 2 a.m. Friday, November 11, 1966.

JOSEPH P. LORDI,  
DIRECTOR

STATE OF NEW JERSEY Deputy Director Saum  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1701

November 29, 1966

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10. STATE LICENSES - NEW APPLICATION FILED.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1701

November 29, 1966

1. COURT DECISIONS - C. & S. TAVERN CORP. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-611-65

C. & S. TAVERN CORP.,  
t/a JACK'S STAR BAR,

Appellant,

vs.

DIVISION OF ALCOHOLIC  
BEVERAGE CONTROL,

Respondent.

-----  
Argued September 12, 1966 - Decided September 20, 1966

Before Judges Conford, Foley and Leonard

On appeal from the Division of Alcoholic Beverage  
Control, Department of Public Safety.

Mr. Louis R. Cerefice argued the cause for appellant.

Mr. Michael C. Rudolph, Deputy Attorney General, argued  
the cause for respondent (Mr. Arthur J. Sills, Attorney  
General of New Jersey, attorney).

PER CURIAM

Appeal from the Director's decision in Re C. & S. Tavern  
Corp., Bulletin 1667, Item 3. Director affirmed. Opinion not  
approved for publication by the Court committee on opinions.

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED  
DURING PENDENCY OF APPEAL.

In the Matter of Disciplinary  
Proceedings against

C. & S. TAVERN CORP.  
t/a JACK'S STAR BAR  
24 Tichenor Street  
Newark, N. J.

SUPPLEMENTAL  
ORDER

Holder of Plenary Retail Consumption  
License C-143, issued by the Municipal  
Board of Alcoholic Beverage Control  
of the City of Newark.

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Louis R. Cerefice, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

On February 28, 1966, I entered Conclusions and Order herein suspending the license for eighty days for permitting congregation of apparent homosexuals and foul language on the licensed premises and sale of an alcoholic beverage in original container for off-premises consumption during prohibited hours. Re C. & S. Tavern Corp., Bulletin 1667, Item 3.

Prior to the effectuation of the suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed my action on September 20, 1966. C. & S. Tavern Corp. v. Division of Alcoholic Beverage Control (App.Div. 1966), not officially reported, recorded in Bulletin 1701, Item 1. Mandate on affirmance having now been received, the suspension may be reimposed.

Accordingly, it is, on this 10th day of October, 1966,

ORDERED that the eighty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-143, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to C. & S. Tavern Corp., t/a Jack's Star Bar, for premises 24 Tichenor Street, Newark, commencing at 2:00 a.m. Monday, October 17, 1966, and terminating at 2:00 a.m. Thursday, January 5, 1967.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

March 27, 1967

BULLETIN 1721

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymong Blvd. Newark, N. J. 07102

March 27, 1967

BULLETIN 1721

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -  
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary  
Proceedings against

PAUL'S SHORE LIQUORS, INC.  
t/a Chez'l Cocktail Lounge  
429 - 433 Cookman Avenue  
Asbury Park, New Jersey

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-1, issued by the City  
Council of the City of Asbury Park.

-----  
George M. Eichler, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq. Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday night February 19 into early Sunday morning February 20, Saturday night February 26, early Saturday morning March 5, Friday night March 11 into early Saturday morning March 12 and Friday night March 18 into early Saturday morning March 19, 1966, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e. g., females impersonating males and males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Five ABC agents participated in the investigation leading to the preferment of the charge.

Agent B testified that, pursuant to specific assignment to investigate the allegation that the licensed premises was frequented by lesbians, he and Agent C arrived in the vicinity thereof on Saturday, February 19, 1966, at approximately 11:40 p.m. Agent C entered upon arrival. Agent B entered the licensed premises (which he described as a tavern) shortly after midnight and positioned himself at the bar away from where C was seated. Tending bar were Marilyn Trygar and Margaret Hogan (also known as "Frankie")

who were officers and stockholders of the corporate licensee. Ten females were seated at the bar. Three were escorted by males.

When asked to describe the appearance of a group of three females that had gained his attention, the agent responded:

"One female was attired in regular men's gray flannel slacks. She was attired with black loafers, white sweat socks, white wool socks. She wore a gray ski sweater. And underneath the ski sweater was a white collar, very similar to my shirt, that was exposed at the top. This female wore no jewelry whatsoever and I could observe no makeup on her. She was seated with two other females, one dressed very feminine in that she had a striped polo shirt-type of blouse on, bell bottom trousers with the tie in the front, and she had on these soft leather boots and regular feminine jewelry. The third member of this trio had on black slacks. There was a zipper front fly in these slacks. Loafers, and she had on a blue short-sleeve sweater. This was a female-type sweater, sleeveless sweater, I should say. She had long hair and she had feminine jewelry on. And she wore a pendulum watch from a chain."

In describing their conduct, the agent testified:

"They -- the more masculine of the three, the girl in the gray slacks and gray sweater, was attracting her attention to the girl sitting in the middle, the more feminine of the three, in that she purchased all of the drinks; she was very attentive to her; she directed her conversation to her; she lit her cigarette and appeared to be the more aggressive of the three."

Continuing, he stated:

"I observed them go to the dance floor and these two people danced cheek to cheek, hugging each other close. And when they finished their dance, the more masculine of the two, the female in the gray slacks and ski sweater, held the other's hand and led her back to the bar; held her chair for her."

The agent's attention was attracted to a specific incident which he described as follows:

"This particular group, the third female, who was attired with the black slacks, the zipper fly and the sleeveless sweater, got up from her position there and started walking towards the men's restroom. And as she got to the front of the door, she made a joking motion with her hand. And the first female, whom I described as wearing the gray slacks and gray sweater, turned around and hollered, 'Now you're going to the right place.' And they all laughed."

Concerning two females seated to the agent's immediate left, he testified:

"Although both were attired in feminine clothes, one was more aggressive to the other, who was more passive. She lit her cigarette; she paid for all the drinks that were served. And in one incident the barmaid, whom I overheard referred to as, I believe, Frankie, came and served them a drink and she asked, 'Is there enough money there?' And then she proceeded to take a wallet from her back pants pocket. She had on slacks."

The agent expressed an opinion that, "although they appeared to be females, they -- their actions and demeanor were that of a male. They led me to believe they were trying to impersonate men." Later he stated that they appeared to be homosexuals, commonly referred to as lesbians.

Agent H testified that he participated in the investigation of the licensed premises and in the course thereof entered the licensed premises on three occasions. On the occasion of his last visit on March 18, 1966, accompanied by ABC agent M, they entered the barroom at 11 p.m. and positioned themselves at the bar closest to the door. Tending bar was Agatha Ann McGuire.

The patronage consisted of approximately thirty, approximately twenty were males and ten females. Almost all of the male patrons were seated on the left-hand side of the bar, and the females were seated on the right-hand side of the bar.

Eight of the females seated in a group attracted the agent's attention because five of them were dressed in "extremely masculine-appearing clothes, primarily using male slacks, fly front, low-cut shoes or desert boots, the ankle high suede boots, white shirts, very wooly sweaters or bulky knit sweaters, both pull-over types and button fronts .... all wore their hair in very much the same manner or fashion, very short cut, combed straight back ending in what is called a duck tail in the back. None of this particular group attired in this manner wore makeup, facial makeup, at all or jewelry."

Continuing his observation of that group, the agent testified:

"Their actions gave me the impression that they were trying to emulate the actions or mannerisms of a male. In smoking a cigarette, for example, the cigarette would be taken back-handed, more or less this way, and it would be flicked with the thumb rather than in a daintier fashion as a girl might do it. When walking to and from the ladies' room, these same females tried to suppress any swaying motion of the hips or any -- oh, you know, any feminine walk, and seemed to walk purposely and consciously flat-footed, or swaggered, the shoulders moving more than the hips, in the manner that a man would walk."

As to their actions and conduct towards each other, the agent observed that "two of the females were feminine appearing and they received quite a bit of attention from the other females there.... The masculine ones, lighting cigarettes; purchasing their drinks for them; well, dancing with them on one occasion, but talking."

Referring to the males, a group of eleven to twelve, seated together, attracted his attention. As to them, he testified as follows:

"... they were very dainty, very effeminate, very overplayed in that they used fem-- actions so feminine that most ladies don't even do that."

Continuing, he testified, "Well, they had the limp-wristed motions of drinking. Or in talking, they would talk in high-pitched voices using such terms as 'dearie', 'sweetie', 'honey.'"

When asked as to whom the terms were directed, the agent responded, "to each other; to each other." Continuing, he added:

"The limp-wristed motion; the extended pinky, we'll say, or last two fingers of either hand when drinking; the very dainty method of smoking a cigarette, of flicking the ash with the forefinger, things like this. When sitting holding the glass in front of them, they also would be tucked in very tight, very dainty, feminine manner.... At one time two males entered at one time, and, you know, referred to each other as 'dear' and 'sweetie' and joined the party.... They seemed to again play up the feminine mannerisms in walking, a swishing or rolling, a gait accentuation, hip motions."

In conversing to each other they would blink their eyelashes more or less rapidly. It was the agent's opinion that the females appeared to be impersonating males and the males were attempting to be feminine. They appeared to be homosexuals.

Shortly before 1 a.m. the agents called the barmaid Miss McGuire. Agent M said to her, "We have a bet going here. I think that girl over there is trying to pick up that other girl. What do you think?" Miss McGuire responded, "maybe the other one likes girls too. I don't know." In response to the question, "Do you always get this many fags in here", Miss McGuire responded, "We only get this crowd at night.... We don't usually get this crowd during the day, only on nights and weekends."

Continuing on the same subject, Miss McGuire said, "What are two normal looking guys like you doing in here? You ought to be out on dates instead of sitting around here looking at these clowns." Agent H responded, "Well, we're unlucky in love. We're thinking of picking up something, but I don't know whether to pick up a lesbian or a fag." Agent M interjected, "and that looks like all you got in here."

At this point Miss McGuire smiled and the agents then identified themselves to her.

Agent H, accompanied by a female companion, entered the licensed premises on February 26, 1966, at approximately 10:10 p.m. and sat approximately half-way down the right-hand side of the bar. Agent S, who had accompanied him to the premises, entered about five minutes later and sat almost directly opposite H. Tending bar was Marilyn Trygar, an officer and stockholder of the licensee corporation. Upon entry, the patronage consisted of six males and three females, which later increased to about ten males and seven females at about 11 p.m. The females were seated to the right and the males to the left. Margaret Hogan, who was also a stockholder and an officer, was seated at the bar on the patrons' side and on one occasion relieved Miss Trygar behind the bar.

Agent H noted that, of the seven females grouped together, four of them appeared to be females attempting to be masculine. They appeared to lower their voices in an attempt to achieve a baritone sound, they punctuated their speech with vulgarities in a normal manner of speaking which would be more typical of a male group. In drinking they suppressed feminine traits by drinking beer from the bottle instead of using a glass. The bottle would be put down with more force than necessary. The four masculine-appearing females paid for the drinks consumed by the group of

seven persons. It was the agent's opinion that females appeared to be homosexual females, commonly known as lesbians.

The agent noted two males enter the barroom walking very effeminately, hold hands at one point and deposit a package at the far end of the bar. They then joined the group of approximately eight males on the left-hand side of the bar. None of the group appeared to be "fully masculine" in their actions. They lisped and spoke in high-pitched voices. They called each other "baby", "honey" and "sweets". They would wink and bat their eyelashes. One male, referred to as "Ed", had his hair dyed and wore it very tall with one part over one eye. He appeared to be more feminine than masculine. It was the agent's opinion that the males were homosexuals and that they were "obviously trying to emulate the mannerisms of women." At one point, the male referred to as Ed purchased a drink for a male companion. When Miss Trygar delivered the drink, she said to Ed, "Well, looks like you bought yourself a blow job." The entire group of homosexuals giggled openly. The agent departed the premises at approximately 11:20 p.m.

Continuing, Agent H testified that he re-visited the licensed premises on Friday, March 11, 1966, accompanied by Agent S, at approximately 11:35 p.m., and sat at the bar. The agents remained in the barroom for a period of approximately one hour. Miss Hogan was tending bar, and Miss Trygar was seated on the patrons' side of the bar. The patronage consisted of six males on the left-hand corner and three females on the right-hand corner of the bar. His attention was attracted to the males because they appeared to be effecting the mannerisms of women. One male wore what appeared to be a charm bracelet ... which is allowed to slip down over half a hand." Continuing, the agent testified that the "actions of all the males on the premises at this time were extremely effeminate; extremely limp-wristed; very sissyish, more or less. The voices, again, were high-pitched." He heard the expressions "sweetie", "dear" and "honey" used among the males. Turning his attention to the females, the agent testified that they wore short haircuts and masculine-appearing clothes. They emulated a masculine style of talking and drinking. They would hold their glass with "all fingers closed and large gulps out of it, rather than small sips as women do." He saw Ed in the premises again on this visit. Ed's hair appeared to be dyed and set and waved in a feminine style. It was the agent's opinion that both the male and female groups appeared to be homosexuals.

On cross examination the agent reaffirmed his opinion that the persons whose actions and dress he had described were apparent homosexuals, although he did not witness any overt acts of a sexual nature or loud, boisterous or offensive talk.

Agent S testified that he visited the licensed premises on February 26, 1966, March 5, 1966 and again on March 11, 1966.

On the occasion of the visit of March 5, 1966, he entered the licensed premises alone at approximately 12:30 p.m. and positioned himself at the left-hand side of the bar. Tending bar were Misses Trygar and Hogan. The patronage increased from about seven males to about seventeen males. The female patronage of ten remained the same. The males were seated in a group on the left-hand side of the bar, rear section, and the females were seated on the opposite side.

In response to the question "Were there any other patrons in that place," the agent responded:

"...there were two females seated at a piano on a stool. One female appeared to be an apparent lesbian the way she was attired. She had a man's shirt, striped shirt. She had a short-sleeved shirt, man's haircut, no makeup; wore men's pants with a belt. She was playing the piano. Seated on the same bench with her enjoying the music -- she was a very good pianist -- was a straight appearing female, with lipstick, long hair."

The agent added that almost all of the seventeen males in the premises attracted his attention. He stated, "The action seemed to be centered around one male in particular with blondish hair; looked like Veronica Lake style. His name was Ed. He was the center of attraction. They giggled, and laughed and joked, and embraced one another on occasion. They were also joined by a colored male, who was about twenty-three years of age. And he had fluffy hair, like; definitely had to be teased. And he got into the group and they were very, very friendly with him. They embraced each other around the waist, kidding, joking, hugging. They also were very, very friendly with the females.... These males referred to each other as 'honey' and the endearing things, and 'sweetie', 'sweetie pie', 'love.'"

As to their actions towards each other, the agent testified that they were "very affectionate toward each other. Sang to each other; looked in each other's eyes. Occasionally, Ed fluttered his eyelids. They used limp wrist motion. He has a high-pitched voice and no beard whatsoever. First I thought he was a female. The colored boy was also fair-skinned. I mean smooth-skinned. He was on the type of Ed. Him and Ed were about the most apparent outstanding fags on the premises." As to their gait, the agent observed that they "swished and swayed. They walked on the balls of their feet."

When questioned as to his observations of the females, the agent responded:

"The females were also in a group together. Later on, the two that were seated at the piano joined this group and they were seated across the bar from me in the far right. Most of them appeared to be dressed in masculine fashion, while a couple of them were really dressed in female clothes but wore no makeup. There were two or three females who appeared to be straight inasmuch as they appeared to be partners or companions of the apparent lesbians. And a couple of pretty nice looking girls. A couple had makeup on. I saw several apparent lesbians place their arms around these girls with the long hair and lipstick; purchase drinks for them and play the part of the active and passive. One would be dating another and one would accept the charms of the other. The act of pressing the passive. And no question about it that there was a separation. There was a definite group on one side, a definite group on the other side. And both Marilyn [Miss Trygar] and Maggie [Miss Hogan] were very friendly with both groups. In fact, they seemed like one happy family."

It was the agent's opinion that the females were attempting to impersonate males and the males were attempting to impersonate females or homosexuals.



It was stipulated between the attorneys that the testimony of Agent S would be the same as the testimony given by Agent H as to the occurrences of February 26, 1966 and March 11 and 12, 1966, as to direct examination and cross examination. Additionally, Agent S testified on cross examination that the "sum and substance" of his testimony was that homosexuals were congregated at the bar and, aside from that, there was nothing unusual about the general conduct or atmosphere or sobriety of the patrons.

Agent M testified that he participated in the investigation of the licensed premises. He accompanied Agent H on March 18 into March 19, 1966. It was stipulated that Agent M's testimony would be the same as the testimony of Agent H on direct and cross examination.

Agent C testified that he accompanied Agent B in the investigation on the night of February 19 into Saturday morning February 20. His testimony substantially corroborated the testimony of Agent B.

In defense of the charge Miss Margaret Hogan and Miss Marilyn Trygar testified that they were the principal stockholders of the licensee corporation, denied that they were homosexuals and offered no other testimony.

Agatha Ann McGuire testified that she was the barmaid referred to in the testimony, had no financial interest in the licensee corporation, and denied that she was a homosexual.

Agents B, C, H, S and M were called for additional cross examination by the attorney for the licensee.

Agent B testified that he did not observe any overt acts of lewdness, immoral activity, brawl or act of violence in the licensed premises, nor did he hear foul, filthy or obscene language or hear any disturbance or unnecessary noise. He reiterated that on the occasion of his visit he saw females impersonating males and in his opinion they were apparent homosexuals.

The testimony of ABC Agents C, H, S and M on cross examination was substantially similar to the testimony of Agent B.

At the conclusion of the testimony the attorney for the licensee and the attorney for the Division stipulated that, if Dr. Gerda Schwartz, a psychiatrist (who was to testify in behalf of the licensee and who failed to appear at the adjourned day of the hearing, apparently not through her fault) appeared at the hearing, she would testify to the following: (1) that, if she saw a group of people conducting themselves in the manner testified to by the Division agents, it would be her opinion that the persons would be apparent homosexuals, (2) that homosexuals, aside from sexual deviation, have the same desire for food, drink and entertainment as a normal person, (3) that there are homosexuals who are readily apparent or identifiable and others who are not readily apparent, and (4) that homosexuals are found in all stations of humanity.

The attorney for the licensee argued that, inasmuch as the Division failed to prove that the licensee allowed, permitted or suffered in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise, the licensee has not violated Rule 5 of State Regulation No. 20 and therefore there should be a finding of not guilty as to the charge.

The attorney for the Division argued that a congregation of apparent homosexuals in licensed premises constitutes a nuisance and is violative of Rule 5 of State Regulation No. 20.

Rule 5 of State Regulation No. 20 reads as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

It was conceded that there were no overt acts of lewdness or immoral activity, nor was there foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise allowed, permitted or suffered upon the licensed premises.

However, I must emphasize that Rule 5 of State Regulation No. 20 is severable and disjunctive. A licensee may be found not guilty of violating that part of the Rule which precedes the semicolon and be found guilty of violating that part of the Rule which follows the semicolon.

The Division apparently based its case upon an alleged violation of the last part of the Rule. The gravamen of the charge is that the licensed premises were "conducted in such manner as to become a nuisance" in that the licensee allowed, permitted and suffered persons who appeared to be homosexuals (both male and female) in and upon the licensed premises.

It has been well established that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been uniformly held, since the earliest days of the Division, that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of Regulation No. 20. As was stated in Re Hoover, Bulletin 1521, Item 1:

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge."

See also Carelis v. Division of Alcoholic Beverage Control, Bulletin 1393, Item 2 (aff'd by Appellate Division on December 21, 1961, not officially reported; reprinted in Bulletin 1430, Item 1); also Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App. Div. 1961), reprinted in Bulletin 1395, Item 3, wherein the court stated:

"In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these character-



istics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405 (App. Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951)."

The licensee's attorney intimated during the hearing that a licensee may not legally bar homosexuals from a public barroom particularly where no overt acts are committed by this class of patrons and to do so would be a denial of their civil rights.

This argument was disposed of by then Commissioner Burnett in Re Plaza Hotel-O'Leary, Bulletin 188, Item 9. Commissioner Burnett ruled that this argument is groundless because it can only apply to an action under the Civil Rights Act where a person was refused liquor because of his race, creed or color, or previous condition of servitude, or for some cause or reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude". citing Shubert v. Nixon Amusement Co., 83 N.J.L. 101 (Sup. Ct. 1912). He concluded that a licensee has an absolute right to refuse to sell or serve liquor to anybody provided only that such refusal is not made on account of race, creed or color. He further cited his early decision in Re Dorflinger, Bulletin 136, Item 12, as follows:

"The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law...."

and further cited Re Rollka, Bulletin 142, Item 4:

"The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

In Re Dorsey, Bulletin 226, Item 11, it was held further that there was nothing in the Alcoholic Beverage Law which defines licensed places as public places. Neither the term "tavern" nor "saloon" is used in the law (Re: Phillips, Bulletin 200, Item 5), let alone a definition as to whether or not they are public places. The Commissioner cited in that case State v. Lynch, 23 N.J.L.J. 45, wherein Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." He said:

"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

His ruling was followed by Justice Parker in State v. Colgan (Sup.Ct. 1919), 92 N.J.L. 307. The Commissioner then stated that, so far as the Alcoholic Beverage Law was concerned, he has consistently treated taverns as being "private places" and hence has held the proprietor responsible for whatever goes on therein and has sustained his power, commensurate with such responsibility, to maintain order and decency, citing Re Tait, Bulletin 188, Item 9; Re Craster,

Bulletin 198, Item 6. See Re Minetti, Bulletin 264, Item 14. A similar contention that apparent homosexuals cannot be barred from licensed premises has most recently been rejected in Re Jo Stem Corp., Bulletin 1625, Item 2, and in Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5, affirmed One Eleven Wines & Liquors v. Division of Alcoholic Beverage Control (App. Div. 1966), not officially reported, recorded in Bulletin 1695, Item 1. See also Re C. & S. Tavern Corp., Bulletin 1667, Item 3, affirmed C. & S. Tavern Corp. v. Division of Alcoholic Beverage Control, not officially reported, recorded in Bulletin 1701, Item 1; Re Val's Bar, Inc., Bulletin 1685, Item 1.

It is my view that the licensee is not barred by the provisions of the Civil Rights Act from excluding this type patronage. A licensee who prefers to either encourage this type patronage or acts in a pusillanimous manner and fails to maintain his premises free from such patronage does so at his peril.

The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the Alcoholic Beverage Law. Re Olympic, 49 N.J. Super. 299, 307.

The court observed In re Schneider, 12 N.J. Super. 449, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indency on the licensed premises."

The court further went on to state:

"'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are contra bonos mores, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2nd ed.)."

A review of the evidence and the law applicable thereto convinces me that the Division has established the truth of the charge, and I therefore recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the Director for twenty days effective October 12, 1965, for sale to an intoxicated person. Re Paul's Shore Liquors, Inc., Bulletin 1646, Item 3.

I further recommend that the license be suspended for sixty days (Re One Eleven Wines & Liquors, Inc., supra, to which should be added five days by reason of the record of suspension for dissimilar violation occurring within the past five years (Re Manruff Corp., Bulletin 1691, Item 1), making a total suspension of sixty-five days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee's attorney, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions. I shall therefore impose the penalty recommended by the Hearer, namely, a license suspension of sixty-five days.

Accordingly, it is, on this 11th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-1, issued by the City Council of the City of Asbury Park to Paul's Shore Liquors, Inc., t/a Chez'l Cocktail Lounge, for premises 429-433 Cookman Avenue, Asbury Park, be and the same is hereby suspended for sixty-five (65) days, commencing at 3:00 a.m. Wednesday, January 18, 1967, and terminating at 3:00 a.m. Friday, March 24, 1967.

JOSEPH P. LORDI  
DIRECTOR

2. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to )  
the Transfer of State Beverage )  
Distributor's license SBD-97, )  
issued to )

SANFORD KALB, )  
t/a Kalb Beverage Co., )  
R.D. #3, Highway #9, )  
Howell Township, )

CONCLUSIONS

to premises )

Highway 9, RR 3, Farmingdale )  
(438 Addison Road) )  
Howell Township, N.J. )

Sanford Kalb, Applicant, Pro se. - -

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee has filed an application for place-to-place transfer of his state beverage distributor's license from premises 436 Hulses' Road to premises 438 Addison Road, Howell Township.

Written objections were filed by Joseph H. Cook and Howard C. Julian, respectively, both of whom reside on Addison Road,

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1756

October 6, 1967

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2. APPELLATE DECISIONS - COPPOLA v. PLAINFIELD AND BLACKWELL.
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8. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATOR ON LICENSED PREMISES - UNQUALIFIED EMPLOYEE - LICENSEE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

CLUB NEW ORLEANS, INC.  
t/a Club New Orleans  
1223-25 Arctic Avenue  
Atlantic City, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-180, issued by the Board  
of Commissioners of the City of  
Atlantic City.

-----  
Lawrence Milton Freed, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on April 14, 1967 it (1) employed a female impersonator as a "go-go girl" entertainer, in violation of Rule 4 of State Regulation No. 20, and (2) employed a minor, age 20, as an entertainer without requisite employment permit, in violation of Rule 3 of State Regulation No. 13.

Absent prior record, the license will be suspended on the first charge for sixty days (Re Talk of the Town, Inc., Bulletin 1614, Item 3; Re Uncle Milt's, Bulletin 1501, Item 5) and on the second charge for five days (Re Rodriguez, Bulletin 1739, Item 3), or a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 7th day of August 1967,

ORDERED that Plenary Retail Consumption License C-180, issued by the Board of Commissioners of the City of Atlantic City to Club New Orleans, Inc., t/a Club New Orleans, for premises 1223-25 Arctic Avenue, Atlantic City, be and the same is hereby suspended for sixty (60) days, commencing at 7 a.m. Monday, August 14, 1967, and terminating at 7 a.m. Friday, October 13, 1967.

JOSEPH P. LORDI  
DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1763

November 29, 1967

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1763

November 29, 1967

1. COURT DECISIONS - ONE ELEVEN WINES & LIQUORS, INC., VAL'S BAR, INC. AND MURPHY'S TAVERN, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR REVERSED WITHOUT PREJUDICE.

SUPREME COURT OF NEW JERSEY

Nos. A-8, A-9 and A-10 - September Term 1967

ONE ELEVEN WINES & LIQUORS, INC., )  
a New Jersey corporation, )

Appellant, )

v. )

DIVISION OF ALCOHOLIC BEVERAGE )  
CONTROL and JOSEPH P. LORDI, )  
Director, etc., )

Respondents. )

\_\_\_\_\_  
VAL'S BAR, INC., a New Jersey )  
Corporation, )

Appellant, )

v. )

DIVISION OF ALCOHOLIC BEVERAGE )  
CONTROL and JOSEPH P. LORDI, )  
Director, etc., )

Respondents. )

\_\_\_\_\_  
MURPHY'S TAVERN, INC., )

Appellant, )

v. )

DIVISION OF ALCOHOLIC BEVERAGE )  
CONTROL, )

Respondent. )

Argued September 11 and 12, 1967. Decided November  
6, 1967

On certification by the Supreme Court.

Mr. Theodore Sager Meth argued for the appellant  
One Eleven Wines & Liquors, Inc. (Messrs. Busch &  
Busch, attorneys).

Mr. Norman A. Oshtry of the Pennsylvania Bar  
argued for the appellant Val's Bar, Inc.  
(Messrs. Jacobson & Silverman, attorneys).

Mr. Louis R. Cerefice argued for the appellant Murphy's Tavern, Inc.

Mr. Stephen Skillman, Deputy Attorney General, argued for the respondents Division of Alcoholic Beverage Control and Joseph P. Lordi, Director, etc. (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney; Mr. Richard Newman and Mr. Michael Rudolph, Deputy Attorneys General, on the brief).

Mr. Avrom J. Gold, attorney for F. & A. Corporation, and Messrs. Diamond and Pitman, attorneys for the Mattachine Society, Inc., filed briefs amicus curiae.

The opinion of the Court was delivered by JACOBS, J.

The Division of Alcoholic Beverage Control disciplined the appellants for permitting apparent homosexuals to congregate at their licensed premises. It suspended the licenses of One Eleven Wines & Liquors, Inc. and Val's Bar, Inc. and revoked the license of Murphy's Tavern, Inc. (Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5; Re Val's Bar, Inc., Bulletin 1685, Item 1; Re Murphy's Tavern, Inc., Bulletin 1677, Item 1.) On One Eleven's appeal to the Appellate Division the suspension of its license was sustained under the authority of Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n., 46 N.J. Super. 405 (App.Div. 1957) and Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App.Div. 1961). (One Eleven Wines & Liquors, Inc. v. Div. of Al. Bev. Contr., Bulletin 1695, Item 1.) We granted certification on the licensee's application. 48 N.J. 349 (1966). (Re One Eleven Wines & Liquors, Inc., Bulletin 1697, Item 2.) We also certified, on our own motion, the appeals which had been duly taken to the Appellate Division by Val's Bar and Murphy's Tavern and were awaiting argument there. R.R. 1:10-1.

The disastrous experiences of national prohibition led to the adoption of the twenty-first amendment and to the return of liquor control to the states in 1933. See Grand Union Co. v. Sills, 43 N.J. 390, 399 (1964). When our Legislature during that year first created the Department of Alcoholic Beverage Control, it vested broad regulatory powers in a state commissioner who immediately set about to insure that abuses which had originally contributed so heavily in bringing about national prohibition, would not be permitted to recur. He adopted stringent regulations which he rigidly enforced and which the courts supported with great liberality. See Franklin Stores Co. v. Burnett, 120 N.J.L. 596 (Sup.Ct. 1938); Gaine v. Burnett, 122 N.J.L. 39 (Sup.Ct. 1939). He concerned himself not alone with matters of lawfulness but also with matters of public sensitivity for he firmly believed that the effectiveness of the new mode of control would turn on the extent of the public's acceptance of the manner in which licensed establishments were conducted. Here again the courts sustained his pertinent regulatory actions with broad sweep. See McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61 (App.Div. 1954); Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n., supra, 46 N.J. Super. 405.

Among the commissioner's early regulations were Rules 4 and 5 which were adopted in 1934. Rule 4 provided that no licensee shall allow in the licensed premises "any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men,



prostitutes, female impersonators, or other persons of ill repute." And Rule 5 provided that no licensee shall allow "any disturbances, brawls, or unnecessary noises" or allow the place of business to be conducted "in such manner as to become a nuisance." In 1936 Rule 5 was revised to include an express prohibition of "lewdness" and "immoral activities," and in 1950 it was again revised to include an express prohibition of "foul, filthy, indecent or obscene language or conduct." See McFadden's Lounge v. Div. of Alcoholic Bev. Control, supra, 33 N.J. Super. at 64; Jeanne's Enterprises, Inc. v. State of N.J., etc., 93 N.J. Super. 230 (App.Div.), aff'd, 48 N.J. 359 (1966).

During the years prior to 1954 the department instituted proceedings under Rule 4 on the basis of evidence that apparent homosexuals had been permitted to congregate at the licensed premises. Apparently the department considered that the effeminate manifestations of the patrons brought them within the prohibition of "female impersonators" although that term relates more properly to transvestites who are, for the most part said to be non-homosexuals. In Re M. Potter, Inc., A.B.C. Bulletin 474, Item 1 (August 7, 1941) the investigators had observed a group of male patrons, "whose voices, gestures and actions were effeminate," dancing and kissing among themselves. Although there was an express finding that "no actual acts of immorality" were committed at the licensed premises, the license was nonetheless suspended. In the course of his formal opinion, the acting commissioner said that the mere "presence of female impersonators in and upon licensed premises presents a definite social problem"; and in line with the then widespread intolerance and limited public understanding of the subject, he made reference to "the deep-rooted personal contempt felt by a normal red-blooded man" and to the notion that "the mere thought of such perverts is repugnant to the normal person."

Since 1954 and despite increasing public tolerance and understanding, departmental proceedings aimed at the congregation of apparent homosexuals have continued apace but have been brought under Rule 5 rather than Rule 4. They have not been based on any specific and individualized charges of lewd or immoral conduct but rather on general charges that by permitting the apparent homosexuals to congregate, the licensees had allowed their places of business to be conducted in such manner "as to become a nuisance" within the contemplation of Rule 5. In Re Polka Club, Inc., A.B.C. Bulletin 1045, Item 6 (December 27, 1954) the then director, in suspending a license on a charge of violation of Rule 5, said that he would not permit licensed premises to become "havens for deviates." In Re Kaczka and Trobiano, A.B.C. Bulletin 1063, Item 1 (April 21, 1955) the licensee introduced expert testimony that homosexuality is not contagious and that seeing groups of homosexuals would not affect normal people but the license was nonetheless suspended. As illustrated in many of his rulings, including Re Louise G. Mack, A.B.C. Bulletin 1088, Item 2 (November 2, 1955), the director entertained the view that since exposure to homosexuals might be harmful to "some members of the public" the congregating of homosexuals must be prohibited as a "threat to the safety and morals of the public." See Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n., supra, 46 N.J. Super. at 408.

In the very cases before us the Division of Alcoholic Beverage Control made it clear that it has not in anywise moderated its long standing position that permitting the congregation of apparent homosexuals, without more, is violative of Rule 5. The evidence against Murphy's Tavern disclosed many individual acts which could have been the basis of specified and individualized charges of lewd or immoral conduct at the licensed premises. But no such charges were preferred and when,

during the course of cross-examination, one of the division's investigators was asked whether he had observed any lewdness at Murphy's Tavern, the prosecuting attorney pointed out that the division had not alleged "any immoral activity or lewdness itself" but had simply alleged that the licensee had "permitted the licensed place of business to become a nuisance" in that it had allowed "these persons to come in and congregate upon the premises."

In the One Eleven proceeding there was no charge and no substantial evidence that lewd or immoral conduct was permitted at the licensed premises. There was a charge and sufficient evidence that the licensee had permitted apparent homosexuals to congregate there. Investigators had visited the premises on several occasions and had observed the patrons; the testimony included the following partial account of their behavior:

They were conversing and some of them in a lisping tone of voice, and during certain parts of their conversations they used limp-wrist movements to each other. One man would stick his tongue out at another and they would laugh and they would giggle. They were very, very chummy and close. When they drank their drinks, they extended their pinkies in a very dainty manner. They took short sips from their straws; took them quite a long time to finish their drink.\*\*\*

They were very, very endearing to one another, very very delicate to each other.\*\*\*

They looked in each other's eyes when they conversed. They spoke in low tones like an effeminate male. When walking, getting up from the stools, they very politely excused each other, hold on to the arm and swish and sway down to the other end of the bar and come back.\*\*\*

Their actions and mannerisms and demeanor appeared to me to be males impersonating females, they appeared to be homosexuals commonly known as queers, fags, fruits and other names.

Similarly in the proceeding against Val's Bar there was no charge nor any substantial evidence at the hearing before the director that lewd or immoral conduct was permitted at the licensed premises. Investigators had visited the premises on several occasions and testified in detail as to the behavioral characteristics which led them to the permissible conclusion that the patrons were apparent homosexuals. See 7 Wigmore, Evidence § 1974 (3d. ed. 1940); Tyree, The Opinion Rule, 10 Rutgers L.Rev. 601 (1956); cf. State v. Campisi, 23 N.J. 513, 520 (1957); State v. Guerrido, 60 N.J. Super. 505, 511 (App.Div. 1960). The investigators acknowledged that for the most part the patrons were "normally dressed" and showed "very good behavior." Dr. Wardell B. Pomeroy, called as an expert witness by the licensee, testified that, although it could not be said from mere observation that any given individual was a homosexual, he would be of the opinion that tavern patrons with the characteristics described by the investigators were apparent homosexuals.

Dr. Pomeroy was associated with the Kinsey Institute for twenty years and was the co-author of several books dealing with sexual behavior and offenses. He referred to the Kinsey studies which contained startling indications that 13% of the males in the country were "more homosexual than heterosexual" and that 37% had "at least one homosexual experience to the point of

orgasm in the course of their life." He also referred to indications that 55% of the population was neutral on the subject of homosexuality and there is now "a more acceptance attitude" than there was twenty years ago. See Mosk, Foreword to The Consenting Adult Homosexuals and the Law, 13 U.C.L.A. L.Rev. 644, 645 (1966). In response to an inquiry by the division's hearer, Dr. Pomeroy voiced the opinion that no adverse social effects would result from permitting homosexuals to congregate in licensed establishments. He noted that non-homosexuals would not be harmed by being in the same premises with homosexuals, and that any who found their mere presence to be offensive would presumably leave. He expressed the view that permitting their congregation in taverns would tend to eliminate clandestine associations in unregulated and unsupervised places of public nature. See Cory and LeRoy, The Homosexual and His Society 119, 121 (1963); see also Schur, Crimes Without Victims 86, 87 (1965) where Dr. Schur dealt with the so-called "gay" bars operating in our neighboring states and elsewhere:

Although such establishments are sometimes condemned as breeding grounds of homosexuality, the charge is not convincing. Most of the people who go there (apart from tourists and some "straight" friends) already are involved in the homosexual life. Anyone who wanders in and who is offended by what he sees is perfectly free to leave. The authors of a recent "view from within" emphasize that although an increase in homosexuality may increase the demand for homosexual bars, the bars can scarcely be said to produce homosexuals. Indeed, as these writers go on to suggest, the bars serve to keep homosexuals "in their place"--out of more public places and, to a certain extent, beyond the public view.\*

The views expressed by Doctors Pomeroy and Schur find significant legal support in various judicial holdings, notably those of the California Supreme Court. In Stoumen v. Reilly, 37 Cal.2d 713, 234 P.2d 969 (1951) the license was suspended because the licensee had permitted "persons of known homosexual tendencies" to patronize and meet at the licensed premises. Under Section 58 of the California Alcoholic Beverage Control Act, it was unlawful to permit the licensed premises to be conducted as a disorderly house or as a place "to which people resort for purposes which are injurious to the public morals, health, convenience or safety." The court, in setting aside the suspension, held that mere patronage "without proof of the commission of illegal or immoral acts on the premises, or resort thereto for such purposes" was not sufficient to show a violation of Section 58. Elsewhere in its opinion it stressed that in order to establish "good cause" for suspension of the license, something more must be shown than that many of the patrons were homosexuals and use the premises "as a meeting place." 234 P.2d at 971.

After the Stoumen case was decided, the California Legislature enacted the provision in section 24,200, subdivision (e) of the Business and Professions Code under which licensed premises were prohibited from being used as resorts for "sexual perverts." In Vallerga v. Dept. of Alcoholic Beverage Con., 53 Cal.2d 313, 1 Cal.Rptr. 494, 347 P.2d 909 (1959) a license was revoked because the licensee had permitted his premises to become a resort for homosexuals. The

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\*The authors referred to by Dr. Schur are Cory and LeRoy who at pages 121-22 of their book entitled The Homosexual and His

Society had this to say:

It can be argued that gay bars spread homosexuality and the elimination of them will help arrest this development. However, people who argue this way usually have little or no understanding of the problem and know very little about such bars. Most of those who go to gay bars are already homosexual and those who are not have no interest in remaining in these places for long, and seldom return. It is difficult to imagine a person walking into a gay bar and becoming homosexual, if he had not already been favorably disposed to such activity.

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revocation was set aside by the California Supreme Court which held that the legislative provision was unconstitutional under Stoumen. The court also considered the contention that, apart from the provision declared unconstitutional, the revocation could be sustained on the ground that continuance of the license would be "contrary to public welfare and morals" within the lower court holdings in Nickola v. Munro, 162 Cal.App.2d 449, 328 P.2d 271 (1958) and Kershaw v. Department of Alcoholic Beverage Control, 155 Cal.App.2d 544, 318 P.2d 494 (1957); in this connection it said:

In the Nickola case the court held generally that seeking sexual gratification in a public tavern with another of the same sex would offend the moral sense of the general public. The court stated, 162 Cal. App.2d at page 457, 328 P.2d at page 276: "There are many things that can be done in the privacy of the home which may not be illegal, but if done in a public tavern are directly offensive to public morals and decency, and demonstrate that the participants are sex perverts. The continuance of the license under such circumstances 'would be contrary to public welfare or morals' as provided in our Constitution. \* \* \* Further than that we do not have to go." Conduct which may fall short of aggressive and uninhibited participation in fulfilling the sexual urges of homosexuals, reported in some instances (See Kershaw v. Department Alcoholic Bev. Control, supra, 155 Cal.App.2d 544, 547-548, 318 P.2d 494), may nevertheless offend good morals and decency by displays in public which do no more than manifest such urges. This is not to say that homosexuals might properly be held to a higher degree of moral conduct than are heterosexuals. But any public display which manifests sexual desires, whether they be heterosexual or homosexual in nature may, and historically have been, suppressed and regulated in a moral society. 347 P.2d at 912.

The court in Vallerga was of the opinion that the record before it contained sufficient evidence of overtly offensive acts within the licensed premises upon which specific and individualized charges of conduct "contrary to public welfare or morals" could have been preferred against the licensee. But no such charges had been preferred and the only charge preferred, namely, permitting the premises to become a resort for homosexuals in violation of subdivision (e), was the one held by the court to be constitutionally infirm. The court's setting aside of the revocation was presumably without prejudice to the right to proceed against the licensee on specific and individualized charges and proof of overt acts within the licensed premises

offensive to "good morals and decency." See 347 P.2d at 913-14; cf. Sabes v. City of Minneapolis, 265 Minn. 166, 120 N.W.2d 871, 878 (1963).

While the New York cases contain obscurities, many of them seem to take an approach comparable to that taken by the California Supreme Court. Thus in People v. Arenella, 139 N.Y.S.2d 186 (N.Y.C. Mag.Ct. 1954) the court, in dealing with a criminal charge that a licensee had allowed his premises to become disorderly, differentiated cases deemed disorderly where the premises were frequented by homosexuals in "open and notorious manner, for the purpose of soliciting others to commit lewd and indecent acts" from others, not deemed disorderly, where the evidence established nothing more than that homosexuals patronized the premises without engaging in prohibited acts therein. 139 N.Y.S.2d at 189. Similarly in Kerma Restaurant Corporation v. State Liquor Authority, 27 A.D.2d 918, 278 N.Y.S.2d 951 (1966) the court, while sustaining the revocation of a license on the basis of solicitation and other overtly offensive acts within the licensed premises, acknowledged that the "mere congregation of homosexuals, where there is no breach of the peace, does not make the premises disorderly" within the meaning of New York's Alcoholic Beverage Control Law. 278 N.Y.S.2d at 952. See In re Farley, 217 N.Y. 105, 111 N.E. 479, 481 (1916); cf. Lynch's Builders Restaurant, Inc. v. O'Connell, 303 N.Y. 408, 103 N.E. 2d 531 (1952); Fulton Bar & Grill, Inc. v. State Liquor Authority, 11 A.D.2d 771, 205 N.Y.S.2d 37 (1960); Gilmer v. Hostetter, 20 A.D.2d 586, 245 N.Y.S.2d 252 (1963).

In Re Revocation of License of Clock Bar, Inc., 85 Dauphin County Reports 125 (Pa. 1966) the court sustained a suspension grounded on evidence of improper solicitations by homosexuals at the licensed premises. However, in the course of its opinion it pointed out there was "no law which forbids homosexuals from being patrons of licensed premises," that the mere, though open, congregation of homosexuals at the licensed premises would not sustain a charge that the licensee maintained "a disorderly house," and that homosexuals at licensed premises become objectionable only "when they make a nuisance of themselves" by improper solicitation or other overtly offensive conduct. 85 Dauphin County Reports at 131. See Cesaroni v. Smith, 202 A.2d 292 (R.I. 1964); but cf. Inman v. City of Miami, 197 So.2d 50 (Fla. Dist.Ct.App. 1967), petition for cert. filed, 36 U.S.L.W. 3163 (U.S. Oct. 11, 1967) (No. 717).

Though in our culture homosexuals are indeed unfortunates, their status does not make them criminals or outlaws. Cf. Robinson v. California, 370 U.S. 660, 8 L.Ed.2d 758 (1962). So long as their public behavior violates no legal proscriptions they have the undoubted right to congregate in public. And so long as their public behavior conforms with currently acceptable standards of decency and morality, they may, at least in the present context, be viewed as having the equal right to congregate within licensed establishments such as taverns, restaurants and the like. See Stoumen v. Reilly, *supra*, 234 P.2d at 971. In sustaining the suspension of One Eleven's license, the Appellate Division took the position that it was not concerned with the rights of the patrons since technically the legal issue before it was the validity of Rule 5 under which the license was suspended. But the asserted rights of the homosexuals to assemble in and patronize licensed establishments are intertwined with the asserted rights of licensed establishments to serve them. Surely in these circumstances, the licensees are properly to be viewed as having standing to seek vindication of the various rights involved in order that the Court's ultimate determination may soundly rest on the complete

mosaic Cf. Griswold v. Connecticut, 381 U.S. 479, 481, 14 L.Ed.2d 510, 512 (1965); NAACP v. Alabama, 357 U.S. 449, 458, 2 L.Ed.2d 1488, 1497 (1958); Barrows v. Jackson, 346 U.S. 249, 255, 97 L.Ed. 1586, 1594 (1953); Pierce v. Society of Sisters, 268 U.S. 510, 535, 69 L.Ed. 1070, 1078 (1925); Sedler, Standing to Assert Constitutional Jus Tertii in the Supreme Court, 71 Yale L.J. 599, 626 (1962).

The Division of Alcoholic Beverage Control, stressing the acknowledged constitutional and statutory breadth of its regulatory powers (Boller Beverages, Inc. v. Davis, 38 N.J. 138, 150 (1962); Guill v. Mayor and Council of City of Hoboken, 21 N.J. 574 (1956)), contends that the mere congregation of apparent homosexuals in taverns is contrary to the public welfare and may therefore reasonably be prohibited under its wide police powers. Cf. Jeanne's Enterprises, Inc. v. State of N.J., etc., supra, 93 N.J. Super. at 232. It points to the fact that the very term "apparent homosexuals" contemplates effeminate behavioral characteristics, such as those described earlier in this opinion, but apparently it concedes, as it must in the light of the times, that such behavioral characteristics without more, would not constitute overt conduct offensive to current standards of morality and decency. It expresses various fears which we have carefully considered but which lack significant support in the records before us or in the available materials on the subject.

Thus the division suggests that the presence of apparent homosexuals in so-called "gay" bars may serve to harm the occasional non-homosexual patrons who happen to stray there but it produces nothing to rebut the expert testimony or the published writings to the contrary. See Cory and LeRoy, supra at 121; Schur, supra at 87. It further suggests that offensive conduct by apparent homosexuals within the licensed premises "may lead to violence" against them by non-homosexuals but this ignores the licensee's comprehensive capacity and responsibility, at the peril of its license, for precluding offensive conduct and for conducting its establishment in lawful and orderly fashion. See In re Olympic, Inc., 49 N.J. Super. 299, 305-09 (App.Div.), certif. denied, 27 N.J. 279 (1958). Finally, it points out that it has consistently tried "to increase public respect and confidence in the liquor industry" (cf. X-L Liquors v. Taylor, 17 N.J. 444, 451 (1955)) and suggests that permitting the congregation of apparent homosexuals, even though carefully supervised, will impair such public respect and confidence. But here again it furnishes nothing affirmative in support of its position which appears to disregard the burgeoning movement towards greater tolerance and deeper understanding of the subject. See Mosk, supra, 13 U.C.L.A. L.Rev. at 645; Model Penal Code § 207.5, Comment (Tent. Draft No. 4, 1955).

When in the 1930's the Department of Alcoholic Beverage Control first took its severe position, it acted on the assumption that the mere congregation of apparent homosexuals had to be outlawed to achieve effective control. It of course had no experience to support the assumption but it took the prohibitory course as the safer one for the then fledgling system. At the time, the interests of the patrons in question were given little consideration and were in any event overwhelmed by the then highly felt transitional need for sweeping restraint. Now, in the 1960's, the transitional need as such is long past and it is entirely appropriate that full sweep be given to current understandings and concepts. Under them it seems clear that, so long as the division can deal effectively with the matter



through lesser regulations which do not impair the rights of well behaved apparent homosexuals to patronize and meet in licensed premises, it should do so. Such narrower course would be consonant with the settled and just principle that restrictions adopted in the exercise of police powers must be reasonable and not go beyond the public need. See N. J. Good Humor, Inc. v. Bradley Beach, 124 N.J.L. 162, 168 (E. & A. 1940); Reingold v. Harper, 6 N.J. 182, 192 (1951); cf. Griswold v. Connecticut, supra, 381 U.S. at 485-86, 14 L.Ed.2d at 515-16; NAACP v. Alabama, 377 U.S. 288, 307, 12 L.Ed.2d 325, 338 (1964).

It must be borne in mind that the division has produced nothing to support any need for continuance of its flat prohibition. Nor has it produced anything to indicate that it could not readily prepare and enforce a fair and sensible regulation which, while permitting apparent homosexuals to assemble in and patronize licensed establishments, prohibits overtly indecent conduct and public displays of sexual desires manifestly offensive to currently acceptable standards of propriety. Such a regulation might well be adopted forthwith to the end that future proceedings would rightly be based on specific charges of improper conduct at the licensed premises rather than, as here, upon general charges of mere congregation which we deem to be unreasonable and legally unsupportable. In the meantime, the discipline imposed in the three cases before us must be set aside, without prejudice, however, to any new charges which the division may prefer against the licensees, or any of them, clearly describing the individual acts alleged to be violative of the provisions in Rule 5 aimed at lewd and immoral conduct within the licensed premises. See Vallerga v. Dept. of Alcoholic Beverage Con., supra, 347 P.2d at 913-14.

Reversed.

PROCTOR, J. (concurring)

Since the charges against the three taverns did not specify any particular offensive acts by the patrons, I concur with the majority opinion. However, I wish to emphasize that, although well-behaved homosexuals cannot be forbidden to patronize taverns, they may not engage in any conduct which would be offensive to public decency. In the record before us it appears that there was evidence of conduct (men kissing each other on the lips, etc.) which would form the basis for disciplinary action at least against One Eleven and Murphy's had they properly been charged. A tavern should not provide an arena for the behavior disclosed by this record. I appreciate that the majority opinion does not say that such conduct will be tolerated, but nonetheless I am expressing my positive view that it should not be.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1763

November 29, 1967

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3. ACTIVITY REPORT FOR SEPTEMBER 1967.
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2. DISCIPLINARY PROCEEDINGS - SOLICITATION FOR PROSTITUTION -  
 NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED  
 FOR 150 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

800 N. MASSACHUSETTS, INC. )  
 t/a The Jet Set Bar & Lounge )  
 15-17 North Illinois Avenue )  
 Atlantic City, N. J. )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption )  
 License C-139, issued by the Board )  
 of Commissioners of the City of )  
 Atlantic City. )

-----  
 Edward I. Feinberg, Esq., Attorney for Licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that on May 28, 1967 it (1) permitted solicitation for prostitution on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) conducted the licensed place of business as a nuisance, viz., permitting apparent male and female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the date alleged, of a total patronage of approximately fifty about one-third were apparent homosexuals.

Absent prior record, the license will be suspended on the first charge for ninety days (Re Rocky Birch, Inc., Bulletin 1724, Item 2) and on the second charge for sixty days (Re Paul's Shore Liquors, Inc., Bulletin 1721, Item 1), or a total of one hundred fifty days, with remission of five days for the plea entered, leaving a net suspension of one hundred forty-five days.

Accordingly, it is, on this 20th day of September 1967,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City to 800 N. Massachusetts, Inc., t/a The Jet Set Bar & Lounge, for premises 15-17 North Illinois Avenue, Atlantic City, be and the same is hereby suspended for one hundred forty-five (145) days, commencing at 7 a.m. Wednesday, September 27, 1967, and terminating at 7 a.m. Monday, February 19, 1968.

JOSEPH P. LORDI  
 DIRECTOR

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

May 6, 1970

BULLETIN 1907

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4. DISCIPLINARY PROCEEDINGS - (Newark) PERMITTING LEWDNESS AND IMMORAL ACTIVITY - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.
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New Jersey State Library

## 3. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - DISMISSED

In the Matter of Disciplinary )  
 Proceedings against )

Perrig, Inc. )  
 t/a Paddock International )  
 1643 Atlantic Avenue )  
 Atlantic City, N.J., )

Holder of Plenary Retail Consump- )  
 tion License C-188 (for the 1968-69 )  
 licensing year) and C-182 (for the )  
 1969-70 licensing year), issued by )  
 the Board of Commissioners of the )  
 City of Atlantic City )  
 ----- )

In the Matter of Disciplinary )  
 Proceedings against )

Roydave Enterprises )  
 t/a Fort Pitt Cafe )  
 170 S. New York Avenue )  
 Atlantic City, N.J., )

Holder of Plenary Retail Consump- )  
 tion License C-35, issued by the )  
 Board of Commissioners of the )  
 City of Atlantic City )  
 ----- )

In the Matter of Disciplinary )  
 Proceedings against )

Friendship House, Inc. )  
 t/a The President of Atlantic City )  
 Albany Avenue & Boardwalk )  
 Atlantic City, N.J., )

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption )  
 License C-194 issued by the Board of )  
 Commissioners of the City of Atlantic )  
 City; transferred during the pendency )  
 of these proceedings to )

South Albany Avenue Corp. )  
 (for the same premises) )  
 ----- )

Edwin H. Helfant, Esq., Attorney for Perrig, Inc., and Roydave )  
 Enterprises )  
 Roy Baylinson, Esq., Attorney for Friendship House, Inc. )  
 Edward F. Ambrose, Esq., Appearing for Division. )

A single Hearer's report is herewith submitted with respect  
 to charges preferred against the above named licensees since they  
 involve a common question of law and are based upon stipulation of  
 facts.

The licensees have entered pleas of not guilty to the  
 following:

Perrig, Inc., t/a Paddock International was charged in three separate counts, that on June 5, June 13, June 14, July 18 and July 24, 1969 it allowed, permitted and suffered female impersonators in and upon its licensed premises, viz., a group of males attired as females who performed on stage for the entertainment of its customers and patrons in violation of Rule 4 of State Regulation No. 20.

Roydave Enterprises, t/a Fort Pitt Cafe was charged with a similar violation on July 19 and July 25, 1969.

Friendship House, Inc., t/a The President of Atlantic City (transferred during the pendency of these proceedings to South Albany Avenue Corp.) was charged with a similar violation on two separate counts occurring on July 18 and July 24, 1969.

It was stipulated that the licensees permitted professional male entertainers dressed as females upon the licensed premises. Each of the licensees was operating a night club during the dates alleged herein and the entertainers of the first two licensees were personnel of two well known packaged song, dance and comedy revues known as "Vive Les Boys" and "The Fantastiks."

With respect to Friendship House, Inc., t/a The President of Atlantic City, the entertainers were personnel of a famous packaged song, dance and comedy revue billed as "The Jewel Box Revue."

Each revue featured men dressed and made up as women, singing, dancing and speaking, using lavish sets, costumes and lighting. No allegation is made that these revues were objectionable, immoral or indecent, other than the fact that the male entertainers were dressed as females.

The licensees did not permit the entertainers to mingle with their customers or patronize the premises and restricted the entertainers' presence upon their premises to "show-connected" activities.

These citations are based upon the alleged violation of Rule 4 of State Regulation No. 20, which reads in pertinent part as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any prostitute, female impersonator, pickpocket, swindler, confidence man, or any notorious criminal, gangster, racketeer, or other person of ill repute;..."

Rule 4 was one of the early regulations promulgated by the then Director in 1934. Apparently the Division considered that the effeminate manifestations of the patrons brought them within the prohibition of "female impersonators", although that term relates more properly to transvestites who are, for the most part, said to be non-homosexuals. Re M. Potter, Inc., Bulletin 474, Item 1. In that matter the acting commissioner said that the mere "presence of female impersonators in and upon licensed premises presents a definite social problem"; and in line with the widespread intolerance and limited public understanding of the subject he made reference to "the deep-rooted personal contempt felt by a normal red-blooded man" and to the notion that "the mere thought of such perverts is repugnant to the normal person."

In memoranda submitted by the attorneys for the licensees it was pointed out that there has been an increased public tolerance and understanding with respect to so-called female impersonators and apparent homosexuals. It was noted that some of the more popular television programs feature chorus lines of men attired as females and some of our leading comedians have female impersonation routines.

These charges cannot be sustained because of the recent holding in One Eleven Wines & Liquors, Inc., v. Division of Alcoholic Beverage Control, et al., 50 N.J. 329 (1967). In this matter, which involved three licensees in three separate proceedings (decided in the same opinion by the New Jersey Supreme Court), this Division disciplined these licensees for permitting apparent homosexuals to congregate at bars. The licensees appealed to the Appellate Division. The Appellate Division on one of the appeals sustained the suspension of the license, and the Supreme Court granted certification of the licensee's application. The Supreme Court also certified on its own motion appeals which had been duly taken to the Appellate Division by other licensees.

It held that this Division was not justified in suspending or revoking licenses because apparent homosexuals were permitted to congregate at bars. Speaking for the Court, Justice Jacobs carefully examined the genesis of Rules 4 and 5 of State Regulation No. 20. He pointed out that in the earlier decisions the Director entertained the view that, since homosexuals might be harmful to "some members of the public", the congregating of homosexuals must be prohibited as a "threat to the safety and morals of the public." Citing Paddock Bar, Inc., v. Alcoholic Beverage Control Div'n, 46 N.J. Super. 405, 408 (App. Div. 1957).

In one of the companion cases, joined in the One Eleven Wines & Liquors, Inc., decision, (Murphy's Tavern, Inc., v. Division of Alcoholic Beverage Control) the Director held that the mere congregation of apparent homosexuals, without more, is violative of Rule 5. (Rule 5 concerns itself with permitting lewdness, immoral activity or conduct upon licensed premises.) The charge did not allege any immoral activity or lewdness itself, but simply asserted that the licensees permitted the premises to be operated as a nuisance because of such congregation of these persons.

In the One Eleven Wines & Liquors, Inc., proceedings, there was no evidence that lewdness or immoral conduct was permitted at the licensed premises. The same situation prevailed with Val's Bar, Inc., the third companion case. In One Eleven Wines & Liquors, Inc., the Division concluded that the mere congregating of apparent homosexuals in taverns is contrary to the public welfare and may therefore reasonably be prohibited under its wide policy powers, citing Jeanne's Enterprises, Inc. v. State of N.J., etc., 93 N.J. Super. p. 232. The Division argued that it has consistently tried "to increase public respect and confidence in the liquor industry" cf. X-L Liquors v. Taylor, 17 N.J. 444, 451 (1955) and suggested that permitting the congregation of apparent homosexuals, even though carefully supervised, would impair such public respect and confidence.

The Supreme Court disagreed, and stated that in this day and age "it is entirely appropriate that full sweep be given to current understandings and concepts. Under them it seems clear that, so long as the division can deal effectively with the matter through lesser regulations which do not impair the rights of well behaved apparent homosexuals to patronize and meet in licensed premises, it should do so. Such narrower course would be consonant with the settled and just principle that restrictions adopted in the exercise of

police powers must be reasonable and not go beyond the public need." One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control, *supra*, 50 N.J. p. 341.

I find that, since the Superior Court has taken this position with respect to the congregation of apparent homosexuals, it is forcefully applicable to the congregation of female impersonators. What is even more significant, however, is that according to the stipulation of facts, these female impersonators were professional entertainers contracted for from well known National agencies who did not mingle with the patrons and performed limited services.

It is ludicrous to consider such professional entertainers, who, as heretofore noted, are usually transvestites, within the definitive context of prostitutes, pickpockets, swindlers, confidence men, criminals, gangsters or racketeers, enjoined from congregating in licensed premises by Rule 4. Indeed, a group of such entertainers can hardly be considered as congregating, where they are engaged in such capacity.

It was specifically stipulated that their entertainment comported to good conduct and was in no way objectionable, lewd or immoral. If, on the other hand, their entertainment degenerated to the point where specific charges of improper conduct could be established and sustained, the licensees would have to bear the brunt of their comprehensive responsibilities at the peril of their licenses.

It is, therefore, recommended that the licensees herein be found not guilty of the said charges, and that the said charges be dismissed.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulations No. 16.

After carefully considering the record and the written memoranda filed by the attorneys for the licensees, I concur in the findings of the Hearer and adopt them as my conclusions herein. Hence I find the licensees not guilty.

Accordingly, it is, on this 7th day of April 1970,

ORDERED that the charges against each of the licensees herein be and the same are hereby dismissed.

Richard C. McDonough,  
Director.



**\$350**

**vol 6  
no 21**

# DRAG

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## In Memoriam

# Danny Brown

The institution of professional female impersonation lost one of its greatest assets with the passing of the great impressario, Mr. Danny Brown.

Mr. Brown passed away at his home in Hallendale, Florida, which he shared with his mother and lifelong friend, Doc Benner.

Mr. Brown, along with Doc Benner, his partner for over 30 years, were the creators and operators of the world famous Jewel Box Revue.

During its 30 year run, the Jewel Box Revue, was the crown Jewel of female impersonation. It was a splashy Las Vegas style production, consisting in its heyday of a cast of 25 men and one girl.

Actually, theatrics aside, Mr. Brown

did much more than entertainment for the transvestite and homosexual individuals. Beginning in the 40's, when the concept of cross dressing was synonymous with homosexuality in the public eye, he spent many nights in jail and days in court. He personally forced many cities to open their doors to the concept of female impersonation, and had many anti drag statutes removed from the law books in many cities in the US.

His professionalism, insistence on quality talent, in good taste especially, and his political contributions to our scene, earn Mr. Brown a proud page in the history of Drag.

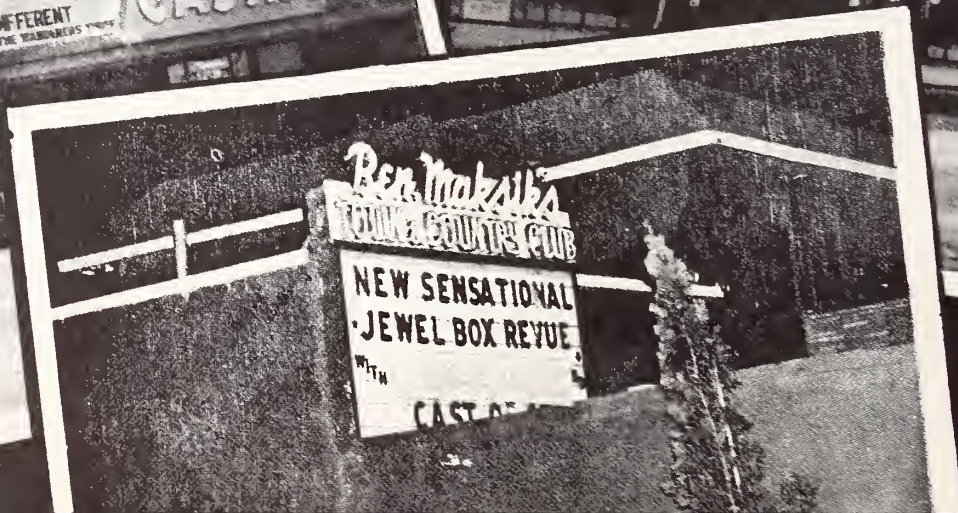
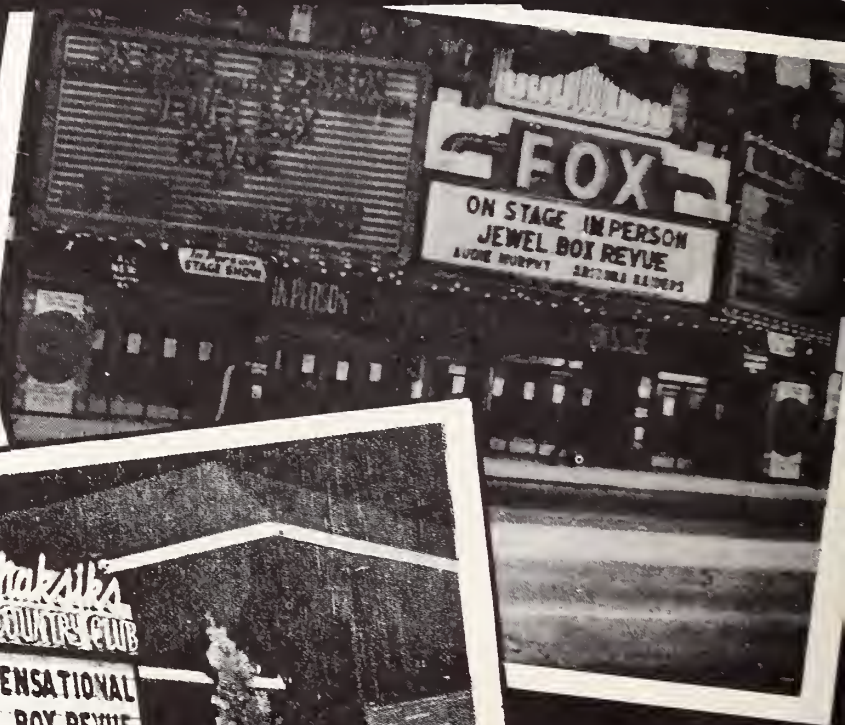
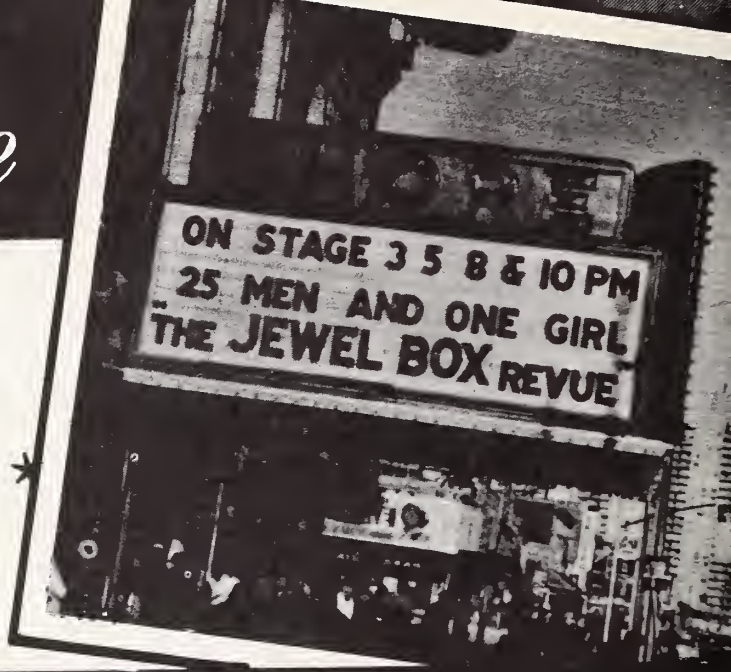
On the following pages we pay our tribute to Mr. Brown by presenting his stars and his productions for one final curtain call.



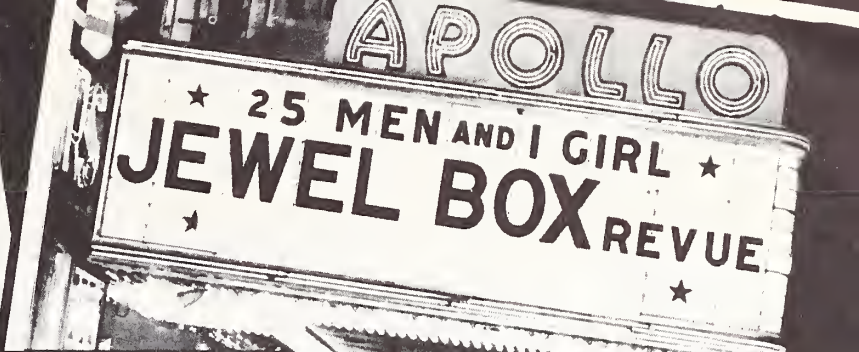
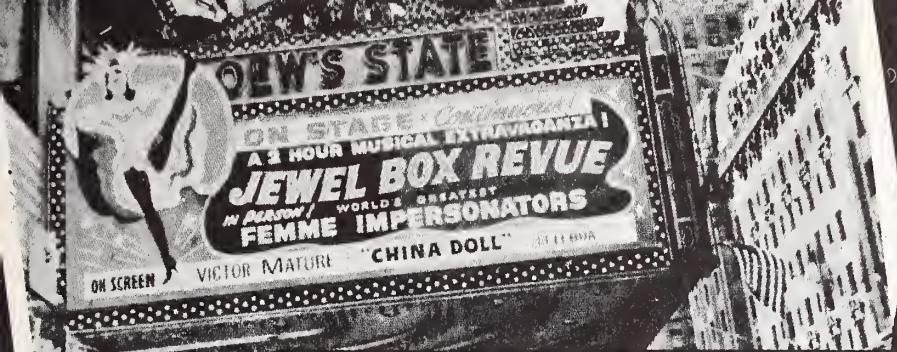
*it's been a pleasure*

# A SALUTE TO

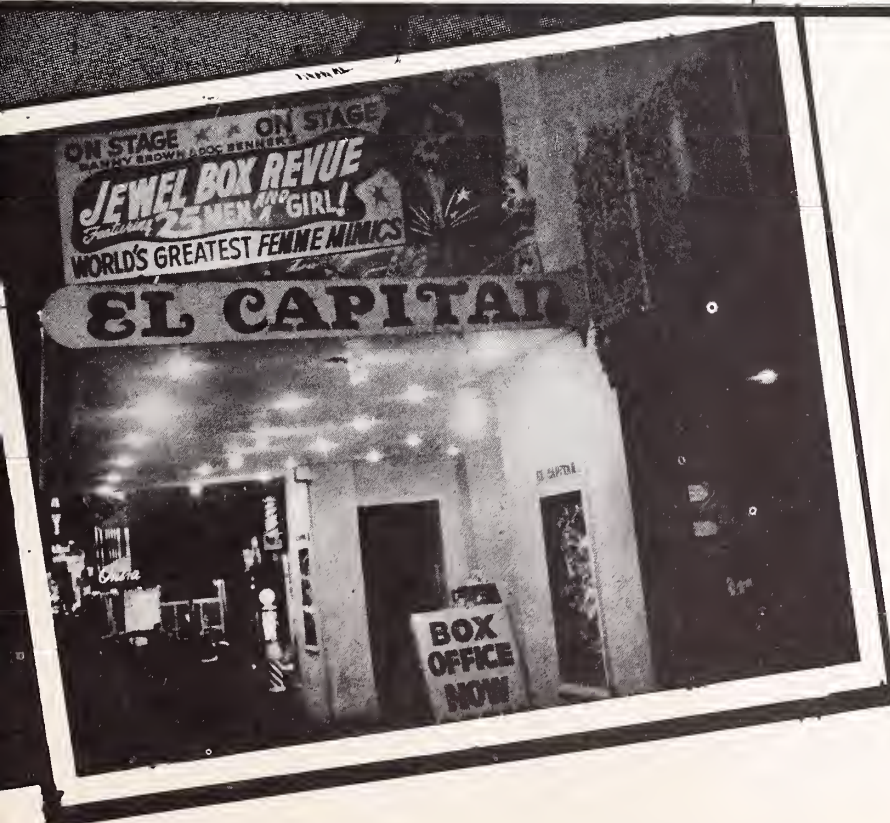
# the Jewel Box Revue







OPENING PRODUCTION, "CAN'T DO A SHOW WITHOUT GIRLS"



We take this opportunity, as part of our obituary on Danny Brown, to show just how great a contribution to the world of Female Impersonation he made. Together with his lifelong partner and mentor, Doc Benner, he was responsible for the rise to fame of such greats of impersonation as T.C. Jones and Lynn Carter, the fabulous Jackie Maye, the exquisite strippers Titanic and Lee Loren, the sensual toe dancers Jan Britton and Toni Lee, the comic zaniness of Billy Austin and Jackie Rose, the perfect impressionists Kit Russell, Billy Daye,





MR. BILLY AUSTIN



MR. DOUG MAGUIRE



ZIEGFELD FOLLIES OPENING



MR. RICKY RENEE



MR. VICI VOGUE



MR. TERRY NOEL



MR. BOB LAKE

BRUNO and MODELS



MR. MICKY LONDON



MR. T. C. JONES



MR. ROBIN ROGERS

MR. CHUNGA OCHOA



MR. JACKIE MAYE



MR. DALE ROBERTS



POOR SUZETTE PRODUCTION



MR. LAVERNE CUMMINGS

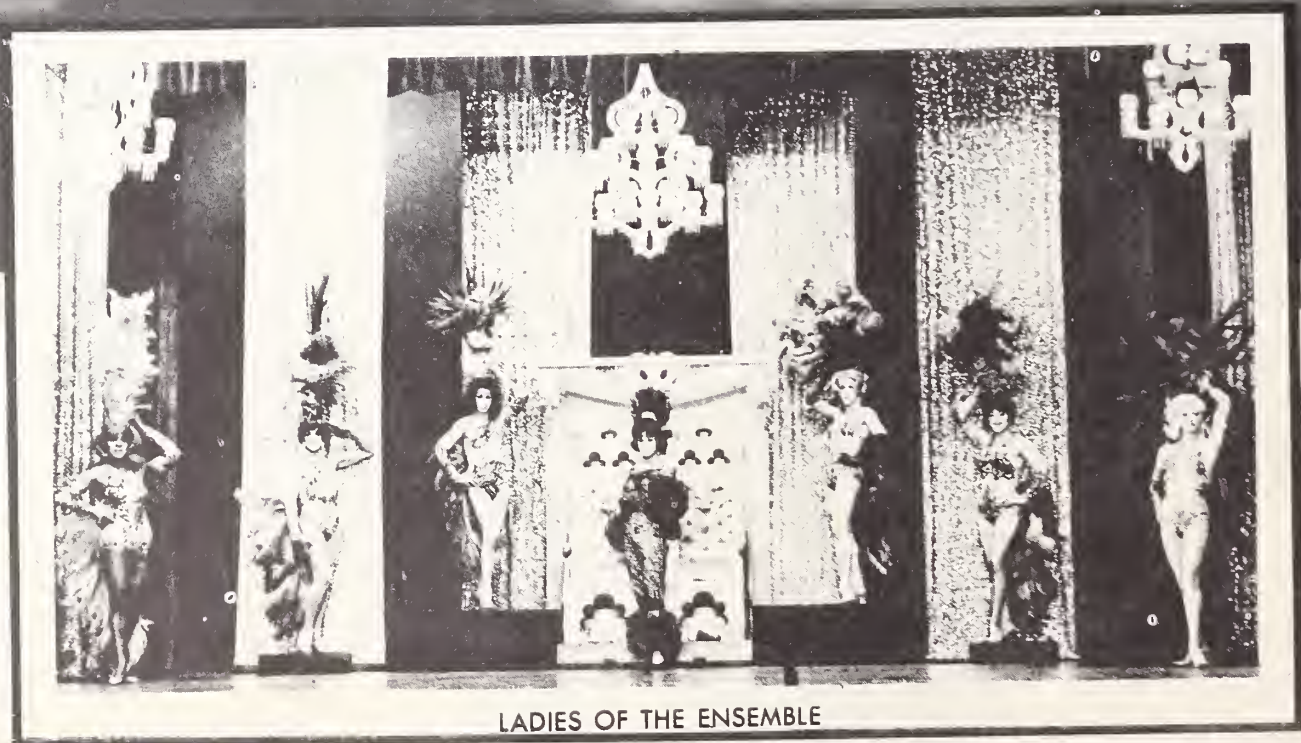


MR. KIT RUSSELL

Harvey Lee and Kim August, the sensual novelty dancing of Don Marshall and the beautiful Jimmie Tai, to the legendary glamour of Chris Moore. All owe their success to the creative genius of Doc and Danny.

But more than impersonation, the thing which made the Jewel Box break records-- and pay off the mortgage at several





LADIES OF THE ENSEMBLE





MR. ROBBIN ROGERS



MR. MAL MICHLES IN ZIEGFELD PRODUCTION

niteclubs--was its class. The Jewel Box could have been successful as just a straight show. All the production numbers would have functioned in any revue. The element of female impersonation only made them more unique.

Danny Brown once told us he liked to have quality entertainment, good entertainment and clean fun. It is on record that throughout its history, the Jewel Box was a family show. The cast was under strict orders not to do anything which would jeopard-



WINNING THE WEST MR. ROBBIN ROGERS AS MINNIE



MR. CHRIS MOORE



dize the show's reputation. More than one entertainer was fired for trying to use off-color jokes in the interest of a cheap laugh. Mr. Brown was thus able to keep the calibre of his show on a high level.

MR. DODDIE DANIELS



MR. CHARLIE COX



MR. GENE CHANDLER



MR. MAL MICHLES

MR. TITANIC



MR. JAN BRITTON



MR. HARVEY LEE



TONY LEE





MR. LEE LOREN



MR. BILLY DAYE



*Mr. Billy Austin*



MR. BRUNO LeFANTASTIQUE



MR. DICK SIMMONS



MR. BOBBIE LA MARR



*Mr. Laverne Cummings*

In addition to its unique spot acts featuring everything from a talking stomach to impressions of Ethel Merman, the highlights of the show had to be the huge production numbers. Messrs. Benner and Brown thought nothing of condensing a whole opera and using it as a finale number!

Production costumes, for which the show



MR. SANDY ROGERS



MR. RAY FRANCIS



MR. JOHN LONAS



MR. RICKI RAYMOND



became just as famous as the aspect of impersonation, cost up to \$4,000.

We let these pictures speak for themselves, and imagine as you gaze for the last time at the Jewel Box Revue, the booming voice announcing, "and now ladies and gentlemen, It is our pleasure to give, in its showgirl parade, the gentlemen of the Jewel Box Revue".

Thank you Doc and Danny.....!





MR. LESTRA LA MONTE



MR. RICKY PARKER



MR. ROBBY ROSS



BY  
BEBE  
SCARPIE

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1916

July 9, 1970

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7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY -  
 LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )

Ceill's Ltd. )  
 t/a Ceill's Saratoga )  
 203-205 South New York Avenue )  
 Atlantic City, N. J., )

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption)  
 License C-102, issued by the Board  
 of Commissioners of the City of )  
 Atlantic City. )

- - - - - )  
 Blatt, Blatt & Consalvo, Esqs., by Martin L. Blatt, Esq.,  
 Attorneys for Licensee  
 Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"During the early morning hours of Saturday, June 21, 1969, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy, indecent and obscene conduct by male and female customers and/ or patrons in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The Division bottomed its case upon the testimony of ABC agents C and D, who were specifically assigned to the investigation of alleged misconduct of patrons at the licensed premises. They gave the following account:

On Saturday, June 21, 1969 at approximately 2:20 a.m., accompanied by three other ABC agents, they entered the premises and seated themselves at the bar. At that time there were approximately fifty male and six female patrons, all of whom attracted the attention of these agents because most of the males were apparent homosexuals and the females were apparent lesbians. The patrons were generally paired up as couples male with male, female with female.

Several of the couples occupied the same stool; that is, one would be seated on the lap of the other. It was clear to the agents that this was obviously a "gay" bar, catering to this type of patronage, and that there were few, if any, patrons other than apparent homosexuals and lesbians. The male couples at the bar usually had their arms about each other, kissing and petting on the neck and freely touching each other's "buttocks and privates." This type of petting on the privates and stomach area and the buttocks characterized the behavior of many of the couples during the entire period of this visit.

There was a band playing, and about five of the couples, male with male and female with female, were dancing. As they danced, they held their arms tightly wrapped about each other, petted and fondled the buttocks and back of the neck and hair.

Several of the couples freely engaged in kissing and "actually exchanged their tongues in each other's mouth." The number of couples on the floor varied from three couples to five couples during the period of the agents' visit.

Agent C called the attention of the bartender to the intimate dancing and activity of a particular couple on the dance floor, and commented, "Boy! They really have it bad for each other!"; the bartender replied "Oh, yes. They are having fun."

The couples danced to slow music and rubbed their bodies against each other, and continued to pet and caress as hereinabove described. After they completed the dancing the couples returned to the bar and continued to kiss and caress all parts of the body, the thighs, buttocks and privates of their partners.

The nature of the caressing and petting was the same with respect to both the male and female couples. They accentuated their motions by being very close to one another "They rubbed, you know, kind of gyrated against each other." One female couple at the bar was engaged in petting and kissing on the neck; their arms around each other's waists; and one female reached her hand inside the other's blouse and fondled her breast while she was kissing her on the neck. This was done right in the presence of one of the bartenders. He made no attempt to interfere with any of this activity.

About 3:15 a.m. the agents identified themselves to Norman Sidlow, the president of the corporate license who ushered them into the kitchen of the restaurant. Sidlow asserted that this was a "gay" bar and he felt that it was better to keep it confined to this type of patronage. Sidlow insisted, however, that he did not observe the kissing or the activities as hereinabove delineated. When it was pointed out to him that numerous couples were standing along the wall and along the bar embracing, petting each other on the privates and thighs, he denied witnessing any such activity.

Norman Sidlow, testifying in behalf of the licensee stated that the stage area where the go-go dancer performs is illuminated by two spotlights but that there are no lights in the barroom except for a small light on the register and one in the window. There is also a small light on the juke box.

He insisted that there were only two or three couples on the dance floor at any one time. Further, a go-go boy performed for the patrons, and his performance lasted about an hour.

He stated that the usual dance numbers were fast numbers, that when a slow number was played on the juke box only one couple was on the floor. He described the patrons as being well-behaved, very quiet and "I didn't see anything wrong." He denied that there was any kissing, petting and any lewd activity. He also denied that two people occupied the same seat, or that any one sat on the lap of his or her companion.

On cross examination, Sidlow asserted that if he were at the door when the agents sought to enter the premises he would have denied them admittance because, as he stated to them:

"Most of our clientele is mostly gay kids. I try to keep out all the straight people I can because I don't want trouble. I think I never had trouble. And if I seen you coming in I wouldn't let you in until I seen identification."

He admitted that all of the patrons of this establishment were "gay" and that he has operated this type of facility for a number of years. However, he insisted that he did not permit any lewd or indecent activity and if he does observe the same he would put them out. He admitted, however, he did not, nor did his bartenders, put anyone out on this date. Furthermore, he questioned the bartenders and they denied that there was any indecent activity taking place on this occasion.

James Dansey, who was employed as a bartender on the night in question, testified that the go-go boy was performing some time between 2:00 and 4:00 a.m. and his performance usually takes about forty to fifty minutes. He stated that there were about thirty to fifty patrons on this date and that they were well behaved. He readily admitted that Agent C pointed out two males dancing with each other and said to him "There are two guys over there really like each other." He replied "It is possible." He admitted that he did observe couples kissing each other but, if there was any "soul kissing", that would be reason for putting them out. However, he did not observe any such action on this night nor did he have any occasion to put anyone out.

On cross examination he admitted that when he was employed elsewhere as a teacher he usually patronized this type of establishment and socialized with some of the patrons.

Finally he admitted that he had specific instructions to use his judgment, and if he felt that the patrons were getting "a little too out of hand to flag them." He didn't mind if the patrons had their arms about each other, but if they engaged in rubbing each other's private parts and similar activity he would stop it. However no such activity took place on these premises. Finally, he insisted that if he saw two males or two females dancing closely with their arms wrapped around each other, that he didn't think this was a reason for interfering.

In adjudicating this matter, I am guided by the long established principle that disciplinary proceedings against liquor licensees are civil in nature, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

In assessing the testimony given herein, I have had an opportunity to observe the demeanor of the witnesses as they testified. Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I find, from my evaluation of the testimony, that the account given by the Division witnesses accurately, factually and credibly substantiated this charge. It is clear that these agents pursued this investigation upon a specific assignment, and there is no suggestion in the record that they had any preconceived prejudice against the licensee. On the other hand, I disbelieve and find incredible the testimony of the witnesses for the licensee, who claimed that there was no misconduct or unusual behavior on the part of the patrons or customers.

It should be stated clearly that the licensee is not being charged with permitting, allowing or suffering the congregation of male homosexuals or lesbians on the licensed premises. This Division recognizes the impact of One Eleven Wines & Liquors, Inc. v. Div. Alcoholic Bev. Cont., 50 N.J. 329 (1967) which held

in effect that the "mere, though open congregation of homosexuals at the licensed premises" forms no basis for a charge against them. Said the court:

"So long as their public behavior violates no legal proscriptions they have the undoubted right to congregate in public. And so long as their public behavior conforms with currently acceptable standards of decency and morality, they may, at least in the present context, be viewed as having the equal right to congregate within licensed establishments such as taverns, restaurants and the like." (50 N.J. at p. 339)

Thus well-behaved, apparent homosexuals and lesbians have the equal right to patronize and meet in these premises as would any other patrons. However, the fact that they have equal rights does not make them more equal than other patrons; they are equally proscribed from engaging in overtly indecent conduct and public displays of sexual desires manifestly offensive to currently acceptable standards of propriety and decency.

The charge made against this licensee was made under Rule 5 of State Regulation No. 20 and specifically cites the licensee for allowing, permitting and suffering lewdness, immoral activity and foul, filthy, indecent and obscene conduct in and upon its licensed premises. Although these premises admittedly cater almost exclusively to a "gay" crowd, nowhere within the four corners of the charge is there any specification of the nature of the patronage. Therefore, the critical issue is whether these patrons, regardless of whether they were heterosexual or apparently homosexual, conducted themselves in such manner as to constitute a violation of the aforementioned regulation.

As above stated, I find from the testimony that the behavior of these patrons was such as to be violative of the subject regulation. It would seem to me that, where a licensee admittedly caters to this type of clientele, it should be particularly sensitive to the conduct of its patrons. Although it has no special obligation, it nevertheless cannot use less diligence than that required by all who must bear the burden of less comprehensive responsibility under the Alcoholic Beverage Control law and the Rules and Regulations of this Division.

It is no answer to this charge that Sidlow or his bartenders did not see the conduct or the specific acts of the patrons as delineated in considerable detail by the ABC agents. It has been consistently held that the licensee and its agents are not only expected to regulate the activity on licensed premises but must use their eyes and ears and must use them effectively to prevent the improper use of licensed premises. Re Schuyler, Bulletin 1787, Item 1; Re Ehrlich, Bulletin 1441, Item 5. A tavern should not provide an arena for the behavior disclosed by the record. See concurring opinion in One Eleven Wines & Liquors Inc. v. Div. Alcoholic Bev. Cont., supra (50 N.J. at p. 342, 343).

After carefully considering the totality of the record herein, the conclusion is inescapable that the said charge has been established by a preponderance of credible evidence. It is, therefore, recommended that the licensee be found guilty of said charge.

Licensee has no prior adjudicated record of suspension of license.



It is, further, recommended that this license be suspended for forty-five (45) days, Re Toth, Bulletin 1356, Item 4.

### Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I have noted the comments in the said exceptions and find that the exceptions have either been considered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of May 1970,

ORDERED that Plenary Retail Consumption License C-102, issued by the Board of Commissioners of the City of Atlantic City to Ceil's Ltd., t/a Ceil's Saratoga, for premises 203-205 South New York Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 7 a.m. Tuesday, June 2, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7 a.m. Friday, July 17, 1970.

Richard C. McDonough  
Director

### 8. DISCIPLINARY PROCEEDINGS - GAMBLING (SLOT MACHINES) - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Tadeusz Kosciuszko Club, Inc.  
State Highway & York St.  
Burlington City, N. J.,

CONCLUSIONS  
and  
ORDER

Holder of Club License CB-12, issued  
by the City Council of the City of  
Burlington

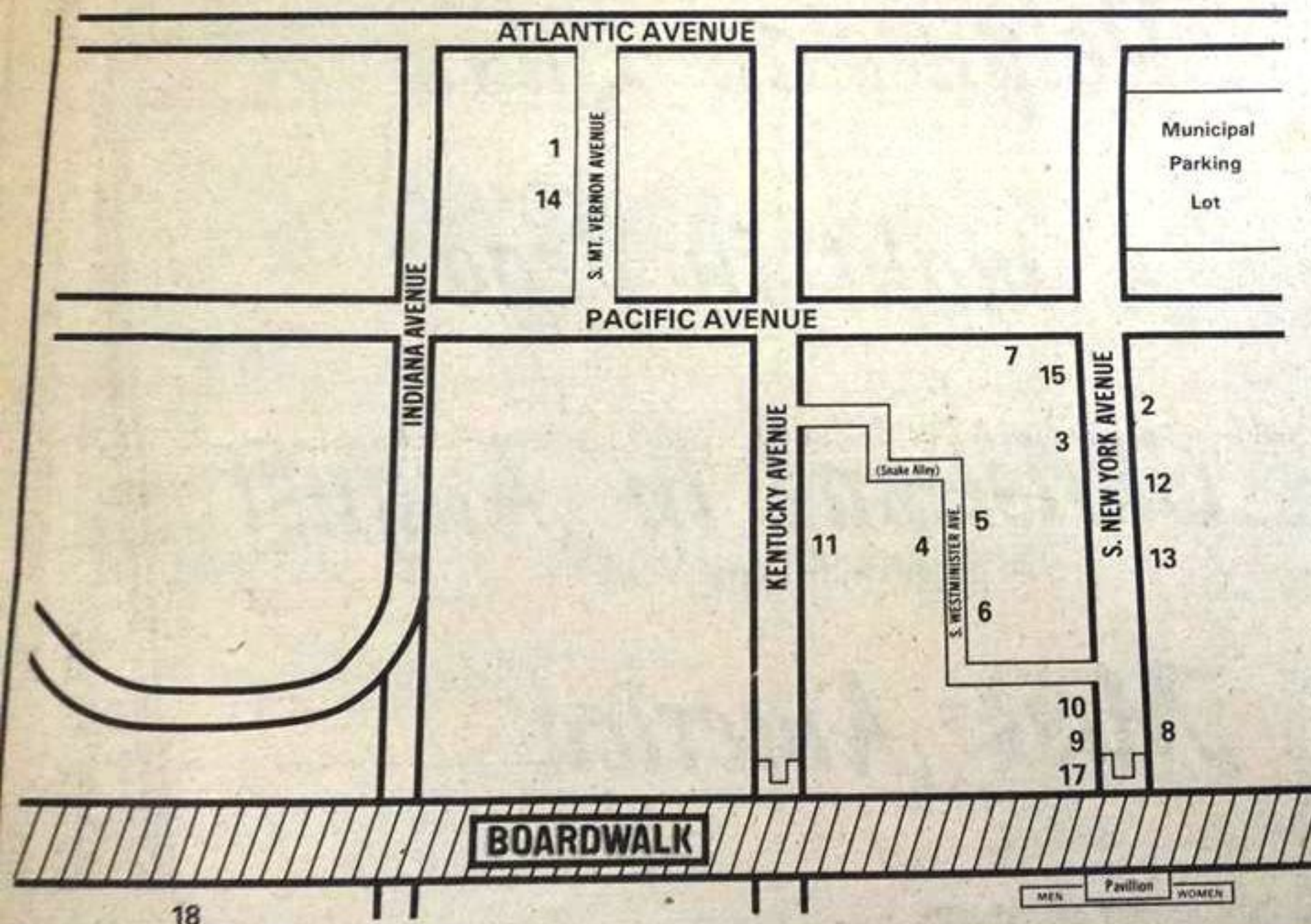
Licensee, by Hugh E. Murray, Secretary, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on February 20, 1970, it permitted the playing for stakes of money (gambling) on and possessed two devices in the nature of slot machines, on the licensed premises, in violation of Rules 7 and 8 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Point Pleasant Lodge #1549 Loyal Order of Moose, Bulletin 1719, Item 11.

# In random order, meet gay Atlantic City



- 1 Brass Rail Bar and Beer Garden, 12 S. Mt. Vernon Avenue. Mostly local people, off-beat bar, low prices, outside Beer Garden, draft beer, fireplace.
- 2 Rendezvous Bar, 137 S. New York Avenue. Known for its great parties, shows, and cruising.
- 3 Chester Lounge, 132 S. New York Avenue. Entrance on side, bar under Chester Inn, modern design, stainless steel dance floor, lights, hotel accommodations, swimming pool.
- 4 M & M Lounge, S. Westminister Avenue (Snake Alley). Two large bars, large disco dance floor, also hotel accommodations.
- 5 Kappa-Gamma-Phi Fraternity House, 159 S. Westminister Avenue. Private, members only.
- 6 Louise's, 169 S. Westminister Avenue, also known as "Entertainer's Club," nice intimate lounge with table service.
- 7 Club Baths, on Pacific near S. New York Avenue, in Grand Hotel. A welcome addition to A.C.'s gay scene.
- 8 Chez Disco, 245 S. New York Avenue. Two bars downstairs, large dance floor, upstairs large disco, great sound system.
- 9 Lark Inn, 174 S. New York Avenue. Two old-fashioned bars with barrels of peanuts and popcorn, large frozen mugs of draft beer, great after the beach.
- 10 Dee's Sub Shop, All the name implies, next to Lark Inn on New York Avenue.
- 11 DeVille, on Kentucky Avenue. Houses the M&M disco and a sauna.
- 12 Spruce House, S. New York Avenue near Rendezvous, hotel.
- 13 Cecil Saraloga, S. New York Avenue, bar, occasional shows.
- 14 Top Of The Rail, 12 S. Mt. Vernon Avenue. Women's bar at the same address as the Brass Rail.
- 15 Lyle's Place, 120 S. New York Avenue, no liquor, 7-30am-4pm, breakfast and lunch.
- 16 Ocean House, 127 S. Ocean Avenue (not on map). Guest house open all year, rooms and apartments, May-Sept. office open 9am-12am.
- 17 Ramrod, 174 1/2 S. New York Avenue. Western/leather bar, back of Lark Inn, pool table.
- 18 Atlantic City's Best Beach—find it here, directly in front of the Bridge Hotel near Indiana Avenue.

07 30 2017



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1933

September 25, 1970

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3. DISCIPLINARY PROCEEDINGS (Long Branch)- SALE TO NON-MEMBERS - SALE DURING PROHIBITED HOURS - FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 30 DAYS.
4. DISCIPLINARY PROCEEDINGS (New Brunswick) - SALE TO MINOR - LEWDNESS AND IMMORAL ACTIVITY (HOMOSEXUALS) - LICENSE SUSPENDED FOR 25 DAYS, SECOND CHARGE DISMISSED.
5. DISCIPLINARY PROCEEDINGS (Atlantic City) - PERMITTING FEMALE ENTERTAINERS TO ACCEPT DRINKS FROM PATRONS (HOSTESS ACTIVITY) - AGGRAVATING CIRCUMSTANCES - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 105 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Camden) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Phillipsburg) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FALSE STATEMENT IN APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Kearny) - SALE TO NON-MEMBERS - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of July 1970,

ORDERED that Club License CB-7 (as renewed for 1970-71 licensing period), issued by the City Council of the City of Long Branch, to Brighton Memorial VFW Post 2140 for premises 255 Willow Avenue, Long Branch, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Tuesday, August 4, 1970 and terminating at 3:00 a.m. Thursday, September 3, 1970.

RICHARD C. McDONOUGH  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LEWDNESS AND IMMORAL ACTIVITY (HOMOSEXUALS) - LICENSE SUSPENDED FOR 25 DAYS, SECOND CHARGE DISMISSED.

In the Matter of Disciplinary  
Proceedings against

Mack, Inc.  
t/a Gold Nugget  
69-71 Albany Street  
New Brunswick, N. J.

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption  
License C-4, issued by the Board of  
Commissioners of the City of New  
Brunswick.

-----  
Irving John Zwillman, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On June 14, 1969, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Sandra ---, age 18, and Barbara ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

- "2. On June 14, 1969, you allowed, permitted

and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20."

The Division presented testimony of the minor Sandra ---, and ABC Agents M, C, N, in support of the said charges.

Sandra testified that she was born on February 21, 1951 and was eighteen years of age on June 14, 1969; that in June 1969 and prior thereto she had visited the licensed premises; that on the evening in June aforesaid, unaccompanied she visited the licensed premises; that she met Barbara in the premises; that she and Barbara took seats at the bar; that George Bland was tending bar; that a male known to her as Murphy, asked her whether she wanted a drink and she accepted his offer; that Murphy ordered two bottles of Champale beer from Bland; that Bland brought two bottles of Champale beer and glasses and placed them on the bar in front of her; that Murphy poured some of the beer in Barbara's glass; that she poured her own beer; that she and Barbara consumed some of the alcoholic beverage; that on none of her visits to the premises had Bland ever asked her to make a written representation that she was an adult; that on one occasion Bland questioned her as to her age and she displayed an identification (her sister's birth certificate) showing her to be over twenty-one years of age; that she did not hear the bartender or anyone else question Barbara with respect to her age; that shortly after they had consumed some of the alcoholic beverage, a male later identified as Agent M, approached Barbara and her and asked whether she had any identification; that she showed him the aforesaid birth certificate, following which he smelled the glass and removed both glasses from the bar.

On cross examination, Sandra testified that Murphy had obtained the two bottles of Champale from Bland who was standing a few feet from where she was seated at the bar. Murphy placed the two bottles on the bar and requested Bland to bring two glasses. Bland returned with the two glasses and placed them on the bar in front of her.

Agent M testified that on June 14, 1969 at about 9:30 p.m., he and ABC Agents C and N arrived in the vicinity of the licensed premises; that immediately upon arrival, he entered the premises alone and took a seat at the bar; that the premises consisted of two rooms, a barroom with a long straight bar, to the left of which is a sitting room with a pool table, a juke box and tables and chairs. There were about forty male and female patrons in the premises; that two bartenders were in attendance, one of whom was George Bland. About 10:25 p.m. he observed Sandra and Barbara enter the premises and take seats at the bar alongside of each other; that he immediately detected that they appeared to be under twenty-one years of age; that he observed George Bland serve each with a bottle of Champale beer and a glass; that Bland poured a portion of the contents of each bottle into each glass, and both females consumed some of the beer; Bland picked up payment thereof from monies on the bar in front of each female. At approximately 10:35 p.m. he telephoned the local Police Department for assistance following which he left the premises to notify the other two agents of his observations. Shortly thereafter he, along with the local police and the other two agents, entered the premises, identified himself to the two females

seated at the bar and seized the aforesaid two bottles of beer and gave them to Agent N. Agent N subsequently poured the contents of each bottle into two six-ounce sample bottles.

Agent M further testified that he had observed three patrons in the premises dressed in female attire who appeared to be males. He and other officers confronted the aforesaid three males in the sitting room, following which he and the other agents identified themselves to Bland and the other bartenders. Continuing, he testified that each of the three males wore a ladies wig, and carried a ladies' handbag. They had their eyelashes painted with mascara and wore ladies' shoes. Later he learned that their under garments were those commonly worn by females.

With respect to the activities of aforesaid female impersonators, Agent M, on cross examination was asked:

"Q Was there anything in your opinion that was offensive in their behavior in that tavern that night?

A Not at all."

In adjudicating the second charge I find no evidence that the female impersonators engaged in any overt acts of lewdness or immoral activity. In view thereof and by reason of a recent ruling by the Director that the mere presence of female impersonators in a licensed premises, without more, e.g. overt acts of lewdness of their engaging in immoral activity is not violative of Rule 4 of State Regulation No. 20. Under the circumstances I recommend that licensee be found not guilty of the second charge herein and that the same be dismissed. See Re Perrig, Inc., Bulletin 1907, Item 3; Cf. One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control, et al., 50 N.J. 329 (1967).

Agent C testified that Sandra admitted to him that she was eighteen years of age; that she had purchased the bottle of Champale beer taken from her from Bland, that she had paid forty-five cents for the same; that she had not produced any identification of her age nor signed any written representation with respect thereto and upon inquiring of Bland whether he had served the alcoholic beverage to Sandra and Barbara, Bland stood mute.

In behalf of the corporate licensee, George Bland testified that on June 14, 1969 he was on duty as a bartender in the licensed premises between 6:00 p.m. and 2:00 a.m.; that about four or five weeks prior thereto Sandra had visited the premises for the first time, displayed the aforesaid birth certificate to him, requested and was served a soft drink. On a subsequent visit he served her Champale beer; that on the night in question Sandra ---, and Barbara ---, were seated at the bar; that Barbara appeared to be an adult. He was asked the following:

"Q No question in your mind?

A No

Q Did they order drinks from you?

A The one time she came in those two were together, and this fellow ordered two bottles of Champale. He was in the middle

of the bar. He walks down with it to where they were. He asked for another glass. I walked down with the glass and set it down. I took my money and rang it up, and I didn't pay no more attention."

Bland further testified that the aforesaid male patron had also ordered a mixed drink. While being questioned by Agent M, Agent N started to remove the glasses, including the mixed drink, from the bar. He informed Agent N that the mixed drink was not intended for the females and pointed to the two bottles of Champale as the ones which were for the use of the two females.

On cross examination, Bland testified that he observed the two females seated at the bar; that he observed aforesaid male (Murphy) approach them and engage them in conversation; that he served two Champale bottles of beer (caps removed) and one glass to aforesaid male patron and accepted ninety cents in payment thereof; that such service was made in front of the cash register about fifteen feet from where the two females were seated following which the male patron returned and ordered a mixed drink and paid for the same with a \$5 bill; that he delivered the mixed drink to the male patron, with the change of the \$5, at which time he was requested to bring a second glass. He returned with the second glass and placed it on the bar between the two bottles of beer. The first time he saw a bottle of beer and glass in front of each female was when the agent approached them. He conceded that at no time did either of the two females make any written representation as to her age.

Mitchel C. Wichowsky, secretary-treasurer of the corporate licensee, testified that he had met Sandra ---, with her mother on a few occasions previous to June 14th aforesaid; that he had not served Sandra ---, any alcoholic beverages because "She never asked for anything." He further testified that he had instructed his bartenders not to serve any patrons who appeared to be minors unless they identified themselves as adults.

Preliminarily, it is well established that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

I have carefully considered the testimony adduced herein together with the exhibits with respect thereto and have had an opportunity to observe the witnesses as they appeared and testified at this hearing.

Referring to the first charge, I am of the opinion that the Division failed to establish the same in so far as it relates to Barbara ---. The Division failed to produce competent proof of Barbara's age. Although Barbara was twice subpoenaed she failed to appear. I therefore recommend that Charge 1, in so far as it refers to Barbara --- be dismissed. However, my evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of the first charge in so far as it relates to Sandra --- by clear and



convincing evidence, and I so recommend.

Licensee has a previous record of suspension of license by the local issuing authority for fifteen days, effective April 14, 1968 for sales to minors.

It is further recommended that, the prior record of suspension of license for similar violation within the past five years considered, the license be suspended for 25 days. Re Terrell, Bulletin 1906, Item 4.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 23d day of July, 1970,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of New Brunswick to Mack, Inc., t/a Gold Nugget, for premises 69-71 Albany Street, New Brunswick, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Thursday, August 6, 1970, and terminating at 2:00 a.m. Monday, August 31, 1970.

RICHARD C. McDONOUGH  
DIRECTOR

Additional information on some of the establishments listed:

**Clover Leaf Inn**, Mays Landing: Louis Palma was the corporate president.

**Fort Pitt**, Atlantic City: included because the author has personal knowledge that it was a gay bar. The only violation found to date has been for falsifying information on a licensing application. The *Bulletin* of 6 May 1970 mentions that the *Jewel Box Revue* is the group performing on these premises. In 1976 the magazine *Drag* had an article covering the *Jewel Box Revue* which the reader can see at the end of the *Bulletin* entry (No. 1907, Item 3). The *Revue* is presented as being more akin to an extravagant Las Vegas-type show rather than the smaller drag troupes that continue to perform in more intimate settings.

**Gold Nugget**, New Brunswick: was owned by Louis Mack he held One Eleven Corporation. The Nugget was cited on 14 April 1968 for selling to minors, which was the second charge levied by the ABC on 25 September 1970 for which their license was suspended for 25-days.

**Jack's Star Bar**, Newark: had their license suspended for 115 days in 1965 on two counts: homosexuals and fighting. On appeal the Court reversed their decision based on an inability to prove the fighting could have been prevented and they remanded the case back to the ABC (recorded ABC *Bulletin*, 28 Sept 1965). On 11 April 1966, the ABC suspended their license for 80 days for allowing homosexuals to enter the premises. This was a longer suspension than was usual for ABC's suspensions on a first charge of this nature.

**Jockey Club**, Atlantic City: became a NJ *Domestic Profit corporation* on 7 October 1955 (No. 5075045000).

**Louise's Entertainer's Club**, Atlantic City: owned and operated by Louise Mack. It is not known if she was related to Emmanuel Mack who owned Manny's Den in New Brunswick. Was the second-heaviest penalized gay bar in the State, having the license suspended for 430 days over a 6-year period and also only one of two establishments to have the license suspended for 240 days. The building was still standing in 2010 though the Club had shuttered its doors years earlier.

**(Mc)Clyment's**, Gloucester: Peter McClyment was compelled to sell his bar license and never operate again for, in part, employing two female impersonators from Philadelphia in 1942.

**New Torch Lounge**, Atlantic City: received a *Trade Name* certification on 21 November 1944 (No. 535370).

**One Eleven**, New Brunswick: Opened in 1944 by Emanuel Manning Mack and his wife and though One Eleven remained the corporate name, and address as it was at 111 Albany Avenue, it was known as Manny's Den, a reflection of the owner. The bar remained at the same location until the late 1970s at least when construction projects caused it to move to Hamilton Street in the Somerset section of Franklin Township where it was called The Den Nightclub. After 49 years of operation One Eleven/Manny's Den closed in the summer of 2016.

**Paddock Inn**, Trenton: 24 South Warren Street, was purchased by Anthony George Capuccio on 12 March 1963 from Mrs. Haje who had been forced out of business by revocation of her license.

**Paddock Lounge**, Asbury Park: received its *Business Entity* certificate in November 1956 (No. 6693930000). Mrs. Marion R. Brown was the corporate president.

**Pelican Bar**, Newark: on Broad Street was owned by Ann Thorn.

**Shell's Bar & Restaurant**, Trenton: on East Front Street was owned by Isabel Shell. Uniquely, Broad Street did not mark the divide between East Front and West Front Streets, as Broad does for every other street. Front Streets division occurred one block west at Warren Street, hence Shell's was located on the north side of East Front in the first block west of Broad Street.

**Storky's**, Trenton: on East Front Street was owned by the Storcella family.

### SECTION 3

#### NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION AND SUPREME COURT DECISIONS

Appellate    1951: *In re Schneider*

Appellate    1957: *Paddock v ABC*

Appellate    1961: *Murphy's Tavern v ABC*

Supreme      1967: *One-Eleven, Murphy's & Val's v ABC*

# In re Schneider

## Opinion

Argued March 12, 1951 —

Decided March 26, 1951.

Appeal from Director of the Division of Alcoholic Beverage Control

Before Judges McGEEHAN, JAYNE, and WM. J. BRENNAN, Jr.

*Mr. Walter D. Van Riper* argued the cause for appellant.

*Mr. Samuel B. Helfand*, Deputy Attorney-General, argued the cause for respondent (*Mr. Theodore D. Parsons*, Attorney-General of New Jersey).

The opinion of the court was delivered by JAYNE, J.A.D.

On December 27, 1950, the Director of the Division of Alcoholic Beverage Control suspended for the remainder of its term the plenary retail consumption license theretofore issued to the appellant for the premises known as the Ocean House at Toms River.

The formal charge from which the suspension of the license ensued was that:

*"On June 21, 1950, and on divers dates prior thereto, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., the renting of rooms for purposes of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20."*

The director stated, *"I am satisfied that the ABC agents' testimony portrays a true picture of events which took place at the times in question."*

We quote his summary of the testimony adduced at the hearing:

*"An ABC agent testified that on Saturday, June 17, 1950, at 12:01 a.m., he and a fellow-agent visited defendant's licensed premises. The witness described the premises as follows: 'It is a large frame building operating as a hotel. They have rooms on the second and third floors and a package goods department in the front of it. Part of the building consists of a grocery store front and as you enter to the barroom, through a stairway, he has a large oval shaped bar.' The ABC agent testified that he entered into conversation with the defendant and inquired from him whether he and his companion might hire rooms as they had a 'couple of girls' and would 'like to use the rooms for an hour or so to have intercourse with them.' The defendant, according to the testimony of the witness, stated, 'I don't give a \_\_\_\_ if you use it for an hour or a week as long as I get paid for the room,' and agreed to let them have rooms, each room's rent to be \$5 per couple. In response to the agent's inquiry regarding baggage, the defendant said, 'No, you don't need any baggage, you register as "Mr. and Mrs." The agent testified that he told the defendant that the girls were not there, but he would let him know when he needed a room.*

*The witness further testified that the agent who accompanied him on June 17, 1950, and three other ABC agents arrived in the vicinity of defendant's licensed premises on Wednesday night, June 21, 1950. The witness testified that he and the agent who had accompanied him on the previous occasion entered the premises together at 9:30 p.m.*

*They took positions at the bar near one of the other agents who had preceded them into the premises and thereupon again engaged in conversation with the defendant. The witness testified that he told the licensee that they would like to hire a couple of rooms as they brought a couple of girls, married women, and would want the room for about an hour for the purpose of engaging in sexual intercourse. The licensee reassured the agents that it was not necessary that they have baggage. The licensee thereupon spoke to his wife and the latter approached the agents, saying, 'Sam told me you fellows want to rent a couple of rooms.'*

*The wife, subsequently identified as Rose Schneider, led the two agents to the second floor and showed them two rooms, Nos. 11 and 12, which the agents agreed to hire. Each agent thereupon signed the register — one as Mr. and Mrs. Frank Arthur and the other as Mr. and Mrs. Warner. Upon inquiry by Mrs. Schneider as to 'Where are the women?', the agent answered, 'Well, they are two married women; they don't want to come here in the hotel with us because they are afraid of getting into trouble.' Mrs. Schneider then said, according to the agent's testimony, 'These girls don't come from Toms River?' 'No, they are not from Toms River,' the agent replied. Mrs. Schneider then said, 'That's good, I don't want to get into trouble with anybody if they know what is going on around here.' Each agent paid Rose Schneider \$5 for the respective rooms, the numbers of the money being used therefor having previously been noted. The agents then ordered a bottle of wine and four glasses, all of which were brought to them by Rose Schneider, for which payment to her in the amount of \$1 was made. The agent testified that Mrs. Schneider, when leaving the room, said, 'Have a good time, boys.'"*

In our examination of the transcript of the evidence we note significantly the answers of the appellant to the following questions:

"Q. They say if anybody else was coming in the room with them? A. Not that I know of."

"Q. Were you told at any time, or did you know that these men intended to bring women in the hotel? A. Not that I know of."

"Q. Do you recall that at least two agents testified this morning that when you entered the room, they said to you 'What are these two men doing here?' and you said 'These men are waiting for their wives.' Is that what you said when you first went in Room 12? A. I don't know."

The director's factual conclusion that the licensee-appellant rented "rooms for purposes of illicit sexual intercourse" is adequately warranted by the evidence. The proceedings are civil in nature and not criminal. *Kravis v. Hock*, 137 N.J.L. 252 ( Sup. Ct. 1948).

It is acknowledged that the agents who obtained the accommodations never had any intention of using them for the purpose of sexual intercourse and that no women accompanied the agents or were expected to participate in the plan.

The insistence of counsel for the appellant is that the order under review was not justified as a matter of law.

The Legislature empowered the commissioner (director, R.S. 52:17B-51) to "make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages," embracing such subjects, *inter alia*, as disorderly houses, prostitution, orderliness, and decency. R.S. 33:1-39.



In pursuance of that authority Rule 5 of State Regulations No. 20 was promulgated, which reads:

*"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."*

Anent the intent and construction of the Alcoholic Beverage Control Law the Legislature declared, *"This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."* R.S. 33:1-73.

The governmental power extensively to regulate the conduct of those privileged to maintain premises for the sale of intoxicating liquors, especially by retail, has uniformly been accorded broad judicial support. *Meehan v. Excise Commissioners*, 73 N.J.L. 382 ( Sup. Ct. 1906), affirmed 75 N.J.L. 557 ( E. A. 1908); *Franklin Stores Co. v. Burnett*, 120 N.J.L. 596 ( Sup. Ct. 1938); *Phillipsburg v. Burnett*, 125 N.J.L. 157 ( Sup. Ct. 1940); *Grant Lunch Corp. v. Driscoll*, 129 N.J.L. 408 ( Sup. Ct. 1943), affirmed 130 N.J.L. 554 ( E. A. 1943), cert. den. 320 U.S. 801, 88 L.Ed. 484, 64 S.Ct. 430 (1944)

*"The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement."* *Kravis v. Hock*, 135 N.J.L. 259 ( Sup. Ct. 1947), reversed on other grounds, 136 N.J.L. 161 ( E. A. 1947).

*"The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner."* *Zicherman v. Driscoll*, 133 N.J.L. 586 ( Sup. Ct. 1946).

And then, moreover, it must be understood that a license to vend intoxicating liquor is not a contract. *Lantz v. Hightstown*, 46 N.J.L. 102, 107 ( Sup. Ct. 1884); *Meehan v. Excise Commissioners*, *supra*. It is not property. R.S. 33:1-26. In reality it is merely a temporary permit or privilege to pursue an occupation otherwise illegal. *Voight v. Board of Excise*, 59 N.J.L. 358 ( Sup. Ct. 1896); *Drozowski v. Sayreville*, 133 N.J.L. 536 ( Sup. Ct. 1946); *Takacs v. Horvath*, 3 N.J. Super. 433 ( Ch. Div. 1949).

And so the words of Justice Van Syckel speaking for the Court of Errors and Appeals in *Paul v. Gloucester County* in 1888, 50 N.J.L. 585, continue to reverberate: *"The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied."* *Hudson Bergen, c., Ass'n. v. Hoboken*, 135 N.J.L. 502 ( E. A. 1947); *Essex Holding Corp. v. Hock*, 136 N.J.L. 28 ( Sup. Ct. 1947). It is a business which may be restricted by *"such conditions as will limit to the utmost its evils."* *Crowley v. Christensen*, 137 U.S. 86, 34 L.Ed. 620 (1890). The responsibility of a licensee may in some circumstances be imposed where, regardless of his knowledge, there is a failure to prevent the prohibited conduct by those entrusted with the management of the licensed premises. *Essex Holding Corp. v. Hock*, *supra*; *Cedar Restaurant Cafe Co. v. Hock*, 135 N.J.L. 156 ( Sup. Ct. 1947); *Galsworthy, Inc. v. Hock*, 3 N.J. Super. 127 ( App. Div. 1949).

It is in this state of the law that we are at liberty to construe Rule 5 of the Regulations liberally within the boundaries of its obvious intent and object. It is to be at once recognized that the Regulations apply fundamentally to the behavior and responsibilities of the licensee. It would be fantastic to suppose that a licensee who himself personally disobeys the regulation does not *"allow, permit and suffer"* the occurrence of the violation. However, in the present case the licensee

allowed, permitted and suffered his wife to engage in the undertaking. We are therefore confronted with the question whether the mere renting of bedrooms in the licensed premises by a licensee with the belief and intention that they will be occupied for the purposes of illicit sexual intercourse is an immoral activity within the signification of Rule 5. We answer the question in the affirmative.

The appellant was charged with renting the rooms for an illegal purpose. A purpose is that which one sets before oneself as an object to be attained; the end or aim to be kept in view in any plan, measure, exertion or operation; design; intention. *Webster's New International Dict.* (2 d ed.); *vide*, *Sawter v. Shoenthal*, 83 N.J.L. 499, 500 ( E. A. 1912). It would seem that the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is in itself an immoral activity comprehended by the scope of the regulatory rule.

In the determination of the present appeal we are not concerned with whether the appellant's activity constituted an indictable common law or statutory crime. *Cf. State v. Baldino*, 11 N.J. Super. 158 ( App. Div. 1951); *State v. Damorjian*, 204 N.W. 498 ( Sup. Ct. Wis. 1925). We are dealing here with a purely disciplinary measure and its alleged infraction.

The pith of the criticism of the action of the director in suspending the enjoyment of the license is that the appellant should have been exonerated because despite his unbecoming and objectionable intent and purpose, illicit sexual intercourse was (1) not in fact in this instance committed on the licensed premises, and (2) its commission was not in reality anticipated by the investigating agents. In what respect those circumstances exculpate the licensee from the profligacy of his own deliberate misconduct is not clear. So far as the appellant as the licensee of the premises could act, he made the accommodations available and conferred his permission to utilize them in an immoral pursuit.

The point advocated in behalf of the appellant that the investigators sought nothing more than evidence is not a novel one in proceedings implicating alleged violations of license privileges. *Vide*, *Black v. MacMahon*, 130 N.J.L. 323 ( Sup. Ct. 1943); *State Board of Medical Examiners v. Coleman*, 132 N.J.L. 64 ( Sup. Ct. 1944).

Here, too, the director has construed the promulgated regulatory rule to be sufficient to encompass the impugned conduct of the appellant. *Cf. Bowles v. Seminole Rock Sand Co.*, 325 U.S. 410, 414, 89 L.Ed. 1700, 65 S.Ct. 1215 (1945).

The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil.

"Immorality" is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are *contra bonos mores*, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. *Webster's International Dict.* (2 d ed.).

The order of the Director of the Division of Alcoholic Beverage Control here subjected to review is affirmed.

**Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n**

**46 N.J. Super. 405 (1957)      134 A.2d 779**

*PADDOCK BAR, INC., DEFENDANT-APPELLANT,*

*v.*

*DIVISION OF ALCOHOLIC BEVERAGE CONTROL, PLAINTIFF-RESPONDENT*

**Superior Court of New Jersey, Appellate Division.**

Argued September 16, 1957.

Decided September 25, 1957.

\*406 Before Judges CLAPP, JAYNE and HUGHES.

Mr. Donald J. Cunningham argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney-General, argued the cause for respondent (Mr. Grover C. Richman, Jr., Attorney-General of New Jersey).

\*407 The opinion of the court was delivered by JAYNE, J.A.D.

A disciplinary proceeding was instituted on May 4, 1956 by the Director of the Division of Alcoholic Beverage Control against the Paddock Bar, Inc., a corporate holder of a plenary retail consumption license to vend beverages at its premises designated as Nos. 810-812 Cookman Avenue, in the City of Asbury Park.

The alleged infraction to which the licensee was summoned to respond reads as follows:

*"On April 6, 7, 8, 21 and 22, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in large numbers in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."*

A hearing involving the accusation was conducted, at which witnesses were sworn and interrogated. Upon consideration of the evidence, the Director concluded that the violation of the stated regulatory rule had been established, and he ordered that the appellant's license be suspended for a period of 60 days, commencing at 7:00 A.M. on March 4, 1957. Although the Director's order was fully obeyed, the licensee doubted its validity, hence the prosecution of this appeal.

The essence of the inquiry addressed to us by the appellant is whether the promulgated regulatory rule specified in the charge encompassed the factual circumstances disclosed by the evidence adduced at the hearing in the present proceedings.

We have heretofore expressed the observation that the liquor business must in the interest of the public welfare be carefully supervised and tightly restrained, and to that end, the governmental power extensively to regulate licensees should be accorded broad judicial support. Such was also \*408 the manifest design of the Alcoholic Beverage Control statute. Vide, *In re Schneider*, 12 N.J. Super. 449 (App. Div. 1951).

In our above-cited decision we stated:

*"The object manifestly inherent in the rule with which we are here concerned [likewise Rule 5] is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."*

True, in the present proceeding the evidence was not of the probative quality to establish beyond uncertainty that the specified patrons of the tavern were in actuality homosexuals. Neither was there any proof that any of such individuals indulged in any licentious solicitations on the premises. Moreover, it is not to be supposed that a licensee is to be disciplined by a temporary or permanent forfeiture of his business privilege merely upon proof of a sale or occasional sales to one who happened to be an adult vagabond, ex-convict, sexual deviate, or prostitute.

Here, a distinguishable understanding of the accusation is imperative. The appellant was charged with the misconduct of permitting persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals habitually and in inordinate numbers (on one occasion, as many as 45) to congregate at the tavern, which, incidentally, was advertised to be "The Gayest Spot in Town."

Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud.

If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often \*409 in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.

It cannot be logically determined that in the present proceeding there was no circumstantial or inferential evidence productive of the impression, perhaps general, that the patrons under observation were not so-called female impersonators. Logical inferences are more than mere suspicions.

A detailed recitation of the informational testimony submitted to the Director need not be undertaken. Illustrative in part is the evidence that these congregated males in a noticeably effeminate pitch of voice addressed each other affectionately as "dearie, honey, doll, and darling." One was overheard to remark, "Well, I think I will wait for my husband." One of the inquisitive investigating agents inquired of the bartender as he ordered a drink, "What are all these guys in here, queers?" The bartender surveyed the customers and replied, "Most of them are." They are said to have manipulated their cigarettes, giggled, and rocked and swayed their posteriors in a maidenly fashion.

The Director resolved that the acquiescence of the licensee in the customary assemblage in relatively large numbers of such individuals at the tavern offended the intent and purpose of Rule 5 of the State Regulations No. 20. See, Re Roselle, Bulletin 279, Item 8.

We do not think that his disciplinary action was arbitrary or without factual basis or legal authority. The order is affirmed.

**Murphy's Tavern, Inc. v. Davis** 70 N.J. Super. 87 (1961) 175 A.2d 1

MURPHY'S TAVERN, INC., APPELLANT, v. WILLIAM HOWE DAVIS,  
DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL,  
RESPONDENT.

**Superior Court of New Jersey, Appellate Division.**

Argued June 6, 1961.

Decided June 26, 1961.

\*88 Before Judges CONFORD, FREUND and KILKENNY.

Mr. George R. Sommer argued the cause for appellant (Mr. Morris Barr, of counsel).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent (Mr. David D. Furman, Attorney General, attorney; Mr. Helfand, of counsel).

The opinion of the court was delivered by FREUND, J.A.D.

Murphy's Tavern, Inc. appeals from an order of the Director of the Division of Alcoholic Beverage Control suspending its retail consumption license for a period of 60 days on the grounds of violation of Rule 5 of State Regulation No. 20, providing that:

*"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."*

\*89 Appellant, whose establishment is located on Mulberry Street in Newark, was charged in two separate proceedings. The first charge alleged that on October 24, 30 and November 8, 1959 the defendant permitted its licensed premises to become a nuisance in that it *"allowed, permitted and suffered thereon persons, males impersonating females, who appeared to be homosexuals,"* and *"allowed, permitted and suffered such persons to frequent and congregate in and upon"* the licensed premises, and otherwise conducted the licensed place of business *"in a manner offensive to common decency and public morals."* The second set of charges was directed towards activities on May 6, 13 and 14, 1960, and asserted that defendant had permitted male persons on the licensed premises *"to engage and participate in foul, filthy and obscene conduct and to solicit and make overtures for and arrangements with other male persons \* \* \* for acts of perverted sexual relations";* the substance of the initial charge was also repeated in order to cover the dates in May 1960.

The hearing officer concluded that the Division had established appellant's guilt as to all charges by a fair preponderance of the evidence. The Director concurred in and adopted the findings and conclusions of the hearer. This appeal is predicated solely on the contention that the proofs adduced in the two proceedings do not justify the inference of violation of the regulation as set forth in the charges. It is claimed that all that was demonstrated by the testimony was that persons with effeminate characteristics may have frequented the premises, and that this in itself does not constitute grounds for license suspension.

The initial hearing covered charges directed to activity upon the licensed premises in October and November of 1959. Investigator R., an agent for the New Jersey Division of Alcoholic Beverage Control, testified that he visited Murphy's Tavern on all three of the dates mentioned in the charge. He described the premises as consisting of one small barroom, about 20 x 25 feet in size. On his October 24 \*90 visit, he noted about 40 patrons in the place, seated at the bar and milling around. Approximately 20 of the customers attracted his attention because of *"their feminine actions and mannerisms, the manner in which they conducted themselves."* More specifically, *"\* \* \* they would speak to the male seated with them, they would roll their eyes at each other and simulate a kiss now and then, like you would peck a kiss at a person, and occasionally they would put their arm around each other and feel different parts of the body \* \* \*."* He added, *"We could definitely smell the odor of perfume on the premises."*

On his second visit, on October 30, agent R. again singled out about 15 to 20 of the 40 to 45 males on the premises as displaying marked feminine characteristics. On one occasion he observed one male say to another, *"I thought you were going home with me tonight," and they would grab each other's private parts and simulate kissing each other."* Agent R. also witnessed an argument between two male patrons in which obscenities were freely exchanged; he testified that the bartender did not move to halt the dispute. On November 8 the same agent again visited the premises, which were filled to capacity with about 75 to 80 males and one couple. He observed about 20 to 25 of the males *"grabbing each other as they would pass going to the men's room \* \* \* they would grab each other's buttocks or each other's private parts \* \* \* they acted as though they were like a man and wife would act. They helped each other drinking and put their arms around one another, and we observed two directly opposite us that had eyebrow pencil on."* Later that evening, agent R. had a conversation with bartender Joseph Yeachshino; the investigator, still unrevealed, said, *"The kids must have really been dressed up for Halloween,"* and Yeachshino replied, *"if you were new in town and came in here for the first time that night, you would have had a ball with all the [obscenity] in here."*

\*91 At about 1:50 A.M., as bartender Carmine Lubertazzi began to extinguish the lights in the tavern and as *"three of these apparent homosexuals passed him [on their way out] they grabbed him by his private parts, at which time he pulled away \* \* \* laughing and joking with them \* \* \* on one occasion one of the apparent homosexuals kissed Mr. Lubertazzi on the cheek as he left."* Several minutes later, agent R. and agent S., who was with him, identified themselves to the bartenders. Lubertazzi was asked whether it was normal for patrons to grab him by his private parts as they left the premises, and he allegedly replied, *"That's nothing \* \* \* you could see that in any straight bar too."* Agent S asked Lubertazzi if he would kiss him, the agent, also, and the bartender replied, *"Sure, if you were my cousin."*

Direct examination of agent S. was waived upon the stipulation that he had accompanied agent R. on the three dates mentioned and that his testimony would be entirely corroborative. On cross-examination, he was asked what made him think any of the patrons were homosexuals; he replied, *"When you see a man put his arm around another man and rest his head on his shoulder, and another man while he's doing that is rotating his hand on a man's buttocks or grabbing each other by the private parts or kissing each other on the lips or cheeks, is to me apparent homosexuals."*

The testimony on behalf of appellant at this initial hearing included that of William R. Peters, a patron of the tavern, who testified that while some of the customers *"have fairly high voices,"* none of them ever annoyed or bothered him and he did not perceive any homosexuals; Lubertazzi, who admitted that persons with feminine characteristics frequented the tavern, said that there were no

patrons whom he considered homosexuals, denied that a patron had kissed him on the cheek upon leaving ("*\*\*\* I remember this fellow leaning over and saying to me good night, I had a nice time \*\*\* it sort of probably could have looked like a kiss on the cheek, but it wasn't*"), and disputed the \*92 substance of the alleged conversations with the agents; part-time bartender Theodore Hirsch, who testified that he worked on November 7 and 8, that there were no homosexuals present, and that he did not see anything obscene or improper but that if he saw one male put his hand around another male at the bar he "*would tell them to cut it out*"; Yeachshino, who conceded that some of the patrons had feminine characteristics but denied that any of them, to his knowledge, were homosexuals, explained possible touching of each other by the patrons on November 8 in terms of the crowded conditions in the tavern ("*there was no other way you could have gotten around unless you touched somebody one way or another*"), disputed the substance of the "Halloween" verbal exchange with agent R., and maintained that he did not know what the expression, "*fag or fairy*," meant; Jack Trachtenberg, one of the owners and the manager of the tavern, who stated that there were customers with effeminate characteristics who usually congregated by themselves but that they never bothered other patrons, that the Newark police had the establishment under surveillance for several months in the summer of 1959 but failed to point out to him any people they considered undesirable, and that he did not take any steps to determine whether the effeminate patrons were in fact homosexuals because "*the only way \*\*\* is to be approached by one or to actually see them do something*," which did not occur in his experience and observation; and Al Thoma, an athletic director at the Newark Athletic Club, who testified that, in his opinion, it is not possible to tell from a person's mannerisms whether he is a homosexual.

At the second hearing, relating to charges focused on May 6, 13 and 14, 1960, three of the respondent's investigators and an administrative inspector testified as to their observations, which were quite similar to those of agents R. and S. on the prior occasions.

Agent D. noted that after he had sat down at the bar on May 6, a male patron named Jimmy (later identified as \*93 James Geddings, Jr.) brushed by him, said, "*Excuse me*," introduced himself and started a conversation. According to the investigator, "*through the course of the conversation he was rubbing his left leg against my right leg, and from time to time he placed his hand on my leg. When I was about to leave, he grabbed me in my privates and asked if I was going to return.*" When agent D. did return to the premises, on May 13, he again encountered Geddings, who once more rubbed the agent's leg and grabbed his privates while attempting to convince him to engage in a sex orgy. The agent was at that time introduced to another male patron named Fred, who openly admired his physique, and, when rebuffed once on a "*proposition*" to the agent, said, "*That is too bad because I could do a lot with that body of yours.*" Agent D. testified that he mentioned to one of the bartenders, Bruce Adams, that he and Geddings were going to have a sex orgy and asked if Bruce would like to come along; Adams purportedly answered, "*No, only with you*," and rolled his eyes. Agent D. left the tavern at midnight with Geddings, and they were met outside by the other agents, who identified themselves and brought Geddings into the back room of the tavern for questioning.

The testimony of agent S. was largely repetitive of that of agent D. He observed many of the male patrons calling each other such names as "*Honey*," "*Doll*," "*Mary*," and "*Mother*." At one point, as he moved down a crowded aisle to the men's room, agent S. accidentally brushed against one of the male patrons, who looked up at him and said, "*Oo, no wonder I always sit here, I get to feel all these warm bodies.*" He also overheard a conversation in which one male said to the other, "*Well, I don't go out with him any more. We are incompatible \*\*\* It is better this way. Besides, Artie is so*



*much younger."* Agent S. also observed, on May 13, *"two males standing very close to each other, facing each other, place their arms about each other in embrace, and moving the lower parts of their bodies in circular motion in time to the music on the juke box."*

\*94 Agent N. testified that he observed agent D. with Geddings, and he confirmed Geddings' physical advances. He recalled that a patron seated next to him had mentioned, nodding in the direction of agent D., *"I wish I could get an introduction to him. He has such a body. There should be a law against that."* Administrative inspector D. confirmed the general observations of the other agents.

Appellant produced Jack Schultz, manager of the tavern on the nights in question, Lubertazzi, and Geddings. Schultz and Lubertazzi merely denied that homosexuals congregated in the tavern, to their knowledge, and insisted that they could not evict a patron from the premises simply because of the way he dressed or the manner in which he spoke. Geddings recalled sitting and talking with agent D. but denied that the subject of homosexual relations ever came up or that he had touched the agent's private parts. He emphatically proclaimed that he was not a homosexual. He admitted that he and agent D. had left the tavern about the same time on the evening of May 13, but he asserted that they were not together and that he was just going on to another bar for a drink.

Our review of the proceedings before the Division is to determine whether there is substantial competent primary evidence to support the inferences of violation drawn by the administrative tribunal. In *re Larsen*, 17 N.J. Super. 564, 573 (App. Div. 1952); *Benedetti v. Bd. of Com'rs of City of Trenton*, 35 N.J. Super. 30, 34 (App. Div. 1955); *Hornauer v. Division of Alcoholic Beverage Control*, 40 N.J. Super. 501, 504 (App. Div. 1956). Therefore, to the extent that appellant asks us to reject the testimony of the respondent's agents in the light of the absolute denials of its own witnesses, we must, having found the agents' testimony reasonably credible, reject its contention. As stated in *Freud v. Davis*, 64 N.J. Super. 242, 246-247 (App. Div. 1960),

*"The choice of accepting or rejecting the testimony of witnesses rests with the administrative agency, and where such choice is \*95 reasonably made, it is conclusive on appeal. We canvass the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it."*

It is further urged that there was no direct proof of the homosexual nature of those patronizing appellant's premises and, alternatively, that even if there was sufficient proof, the mere presence of persons with abnormal physical or emotional tendencies does not, without more, require their exclusion from the premises.

In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, *Paddock Bar, Inc. v. Alcoholic Beverage Control Division*, 46 N.J. Super. 405 (App. Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. *In re Schneider*, 12 N.J. Super. 449 (App. Div. 1951).

Secondly, aside from the question of actual homosexuality, the proofs herein are, considering our reviewing function, highly persuasive as to the overt acts of lewdness practiced upon the premises. The testimony of the agents with respect to the physical touching of private parts, the simulated kissing, and the suggestiveness of many of the conversations cannot be overlooked in this regard. And the recital of agent D. with respect to his encounter with Geddings, though denied by the latter, could reasonably be believed by the hearing officer and the Director. Agent D.'s direct \*96 testimony that he was "*propositioned*," along with the reports of other conversations overheard by the investigators, provides ample support for the finding of guilt on the charge of soliciting.

It should not be thought that the court is callous to the problem of the homosexual, medically or socially. The public interest in tight control over the liquor business, *In re Olympic, Inc.*, 49 N.J. Super. 299, 306 (App. Div. 1958), certification denied 27 N.J. 279 (1958), involves, however, neither the curative approach of the physician nor the analytical view of the sociologist. The primary concern in this regard is maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded.

Affirmed.

**One Eleven Wines & Liquors, Inc. v. Div. Alcoholic Bev. Cont.**

**50 N.J. 329 (1967)                      235 A.2d 12**

**ONE ELEVEN WINES & LIQUORS, INC.**, A NEW JERSEY CORPORATION, APPELLANT, v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND JOSEPH P. LORDI, DIRECTOR, ETC., RESPONDENTS.

**VAL'S BAR, INC.**, A NEW JERSEY CORPORATION, APPELLANT, v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND JOSEPH P. LORDI, DIRECTOR, ETC., RESPONDENTS.

**MURPHY'S TAVERN, INC.**, APPELLANT, v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL, RESPONDENT.

**The Supreme Court of New Jersey.**

Argued September 11 and 12, 1967.

Decided November 6, 1967.

Mr. Theodore Sager Meth argued for appellant One Eleven Wines & Liquors, Inc. (Messrs. Busch & Busch, attorneys).

\*330 Mr. Norman A. Oshtry of the Pennsylvania Bar argued for appellant Val's Bar, Inc. (Messrs. Jacobson & Silverman, attorneys).

Mr. Louis R. Cerefice argued for appellant Murphy's Tavern, Inc.

Mr. Stephen Skillman, Deputy Attorney General, argued for respondents Division of Alcoholic Beverage Control and Joseph P. Lordi, Director, etc. (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney; Mr. Richard Newman and Mr. Michael Rudolph, Deputy Attorneys General, on the brief).

Mr. Avrom J. Gold, attorney for F. & A. Corporation, and Messrs. Diamond and Pitman, attorneys for The Mattachine Society, Inc., filed briefs amicus curiae.

The opinion of the court was delivered by JACOBS, J.

The Division of Alcoholic Beverage Control disciplined the appellants for permitting apparent homosexuals to congregate at their licensed premises. It suspended the licenses of One Eleven Wines & Liquors, Inc. and Val's Bar, Inc. and revoked the license of Murphy's Tavern, Inc. On One Eleven's appeal to the Appellate Division the suspension of its license was sustained under the authority of *Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n*, 46 N.J. Super. 405 (App. Div. 1957) and *Murphy's Tavern, Inc. v. Davis*, 70 N.J. Super. 87 (App. Div. 1961). We granted certification on the licensee's application. 48 N.J. 349 (1966). We also certified, on our own motion, the appeals which had been duly taken to the Appellate Division by Val's Bar and Murphy's Tavern and were awaiting argument there. R.R. 1:10-1.

The disastrous experiences of national prohibition led to the adoption of the twenty-first amendment and to the \*331 return of liquor control to the states in 1933. See *Grand Union Co. v. Sills*, 43 N.J. 390, 399 (1964). When our Legislature during that year first created the Department of Alcoholic Beverage Control, it vested broad regulatory powers in a state commissioner who immediately set about to insure that abuses which had originally contributed so heavily in bringing

about national prohibition, would not be permitted to recur. He adopted stringent regulations which he rigidly enforced and which the courts supported with great liberality. See *Franklin Stores Co. v. Burnett*, 120 N.J.L. 596 (Sup. Ct. 1938); *Gaine v. Burnett*, 122 N.J.L. 39 (Sup. Ct. 1939). He concerned himself not alone with matters of lawfulness but also with matters of public sensitivity for he firmly believed that the effectiveness of the new mode of control would turn on the extent of the public's acceptance of the manner in which licensed establishments were conducted. Here again the courts sustained his pertinent regulatory actions with broad sweep. See *McFadden's Lounge v. Div. of Alcoholic Bev. Control*, 33 N.J. Super. 61 (App. Div. 1954); *Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n*, supra, 46 N.J. Super. 405.

Among the commissioner's early regulations were Rules 4 and 5 which were adopted in 1934. Rule 4 provided that no licensee shall allow in the licensed premises "*any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill repute.*" And Rule 5 provided that no licensee shall allow "*any disturbances, brawls, or unnecessary noises*" or allow the place of business to be conducted "*in such manner as to become a nuisance.*" In 1936 Rule 5 was revised to include an express prohibition of "*lewdness*" and "*immoral activities,*" and in 1950 it was again revised to include an express prohibition of "*foul, filthy, indecent or obscene language or conduct.*" See *McFadden's Lounge v. Div. of Alcoholic Bev. Control*, supra, 33 N.J. Super., at p. 64; *Jeanne's Enterprises, Inc. v. State of N.J., etc.*, 93 N.J. Super. 230 (App. Div.), affirmed, 48 N.J. 359 (1966).

\*332 During the years prior to 1954 the department instituted proceedings under Rule 4 on the basis of evidence that apparent homosexuals had been permitted to congregate at the licensed premises. Apparently the department considered that the effeminate manifestations of the patrons brought them within the prohibition of "*female impersonators*" although that term relates more properly to transvestites who are, for the most part said to be non-homosexuals. In *Re M. Potter, Inc.*, A.B.C. Bulletin 474, Item 1 (August 7, 1941) the investigators had observed a group of male patrons, "*whose voices, gestures and actions were effeminate,*" dancing and kissing among themselves. Although there was an express finding that "*no actual acts of immorality*" were committed at the licensed premises, the license was nonetheless suspended. In the course of his formal opinion, the acting commissioner said that the mere "*presence of female impersonators in and upon licensed premises presents a definite social problem*"; and in line with the then widespread intolerance and limited public understanding of the subject, he made reference to "*the deep-rooted personal contempt felt by a normal red-blooded man*" and to the notion that "*the mere thought of such perverts is repugnant to the normal person.*"

Since 1954 and despite increasing public tolerance and understanding, departmental proceedings aimed at the congregation of apparent homosexuals have continued apace but have been brought under Rule 5 rather than Rule 4. They have not been based on any specific and individualized charges of lewd or immoral conduct but rather on general charges that by permitting the apparent homosexuals to congregate, the licensees had allowed their places of business to be conducted in such manner "*as to become a nuisance*" within the contemplation of Rule 5. In *Re Polka Club, Inc.*, A.B.C. Bulletin 1045, Item 6 (December 27, 1954) the then director, in suspending a license on a charge of violation of Rule 5, said that he would not permit licensed premises to become "*havens for deviates.*" In *Re Kaczka and Trobiano*, \*333 A.B.C. Bulletin 1063, Item 1 (April 21, 1955) the licensee introduced expert testimony that homosexuality is not contagious and that seeing groups of homosexuals would not affect normal people but the license was nonetheless suspended. As illustrated in many of his rulings, including *Re Louise G. Mack*, A.B.C. Bulletin 1088, Item 2

(November 2, 1955), the director entertained the view that since exposure to homosexuals might be harmful to "some members of the public" the congregating of homosexuals must be prohibited as a "threat to the safety and morals of the public." See *Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n*, supra, 46 N.J. Super., at p. 408.

In the very cases before us the Division of Alcoholic Beverage Control made it clear that it has not in anywise moderated its long standing position that permitting the congregation of apparent homosexuals, without more, is violative of Rule 5. The evidence against Murphy's Tavern disclosed many individual acts which could have been the basis of specified and individualized charges of lewd or immoral conduct at the licensed premises. But no such charges were preferred and when, during the course of cross-examination, one of the division's investigators was asked whether he had observed any lewdness at Murphy's Tavern, the prosecuting attorney pointed out that the division had not alleged "any immoral activity or lewdness itself" but had simply alleged that the licensee had "permitted the licensed place of business to become a nuisance" in that it had allowed "these persons to come in and congregate upon the premises."

In the One Eleven proceeding there was no charge and no substantial evidence that lewd or immoral conduct was permitted at the licensed premises. There was a charge and sufficient evidence that the licensee had permitted apparent homosexuals to congregate there. Investigators had visited the premises on several occasions and had observed the patrons; the testimony included the following partial account of their behavior:

*\*334 They were conversing and some of them in a lisping tone of voice, and during certain parts of their conversations they used limp-wrist movements to each other. One man would stick his tongue out at another and they would laugh and they would giggle. They were very, very chummy and close. When they drank their drinks, they extended their pinkies in a very dainty manner. They took short sips from their straws; took them quite a long time to finish their drink. \* \* \**

*They were very, very endearing to one another, very, very delicate to each other. \* \* \**

*They looked in each other's eyes when they conversed. They spoke in low tones like an effeminate male. When walking, getting up from the stools, they very politely excused each other, hold on to the arm and swish and sway down to the other end of the bar and come back. \* \* \**

*Their actions and mannerisms and demeanor appeared to me to be males impersonating females, they appeared to be homosexuals commonly known as queers, fags, fruits and other names.*

Similarly in the proceeding against Val's Bar there was no charge nor any substantial evidence at the hearing before the director that lewd or immoral conduct was permitted at the licensed premises. Investigators had visited the premises on several occasions and testified in detail as to the behavioral characteristics which led them to the permissible conclusion that the patrons were apparent homosexuals. See 7 Wigmore, Evidence § 1974 (3d ed. 1940); Tyree, The Opinion Rule, 10 Rutgers L. Rev. 601 (1956); cf. *State v. Campisi*, 23 N.J. 513, 520 (1957); *State v. Guerrido*, 60 N.J. Super. 505, 511 (App. Div. 1960). The investigators acknowledged that for the most part the patrons were "normally dressed" and showed "very good behavior." Dr. Wardell B. Pomeroy, called as an expert witness by the licensee, testified that, although it could not be said from mere observation that any given individual was a homosexual, he would be of the opinion that tavern patrons with the characteristics described by the investigators were apparent homosexuals.

Dr. Pomeroy was associated with the Kinsey Institute for twenty years and was the co-author of several books dealing with sexual behavior and offenses. He referred to the Kinsey \*335 studies which contained startling indications that 13% of the males in the country were "*more homosexual than heterosexual*" and that 37% had "*at least one homosexual experience to the point of orgasm in the course of their life.*" He also referred to indications that 55% of the population was neutral on the subject of homosexuality and there is now "*a more acceptance attitude*" than there was twenty years ago. See Mosk, Forward to *The Consenting Adult Homosexuals and the Law*, 13 U.C.L.A.L. Rev. 644, 645 (1966). In response to an inquiry by the division's hearer, Dr. Pomeroy voiced the opinion that no adverse social effects would result from permitting homosexuals to congregate in licensed establishments. He noted that non-homosexuals would not be harmed by being in the same premises with homosexuals, and that any who found their mere presence to be offensive would presumably leave. He expressed the view that permitting their congregation in taverns would tend to eliminate clandestine associations in unregulated and unsupervised places of public nature. See Cory and Le Roy, *The Homosexual and His Society* 119, 121 (1963); see also Schur, *Crimes Without Victims* 86, 87 (1965) where Dr. Schur dealt with the so-called "gay" bars operating in our neighboring states and elsewhere:

*"Although such establishments are sometimes condemned as breeding grounds of homosexuality, the charge is not convincing. Most of the people who go there (apart from tourists and some 'straight' friends) already are involved in the homosexual life. Anyone who wanders in and who is offended by what he sees is perfectly free to leave. The authors of a recent 'view from within' emphasize that although an increase in homosexuality may increase the demand for homosexual bars, the bars can scarcely be said to produce homosexuals. Indeed, as these writers go on to suggest, the bars serve to keep homosexuals 'in their place' out of more public places and, to a certain extent, beyond the public view."*[\*]

\*336 The views expressed by Doctors Pomeroy and Schur find significant legal support in various judicial holdings, notably those of the California Supreme Court. In *Stoumen v. Reilly*, 37 Cal. 2d 713, 234 P.2d 969 (1951) the license was suspended because the licensee had permitted "*persons of known homosexual tendencies*" to patronize and meet at the licensed premises. Under Section 58 of the California Alcoholic Beverage Control Act, it was unlawful to permit the licensed premises to be conducted as a disorderly house or as a place "*to which people resort for purposes which are injurious to the public morals, health, convenience or safety.*" The court, in setting aside the suspension, held that mere patronage "*without proof of the commission of illegal or immoral acts on the premises, or resort thereto for such purposes*" was not sufficient to show a violation of Section 58. Elsewhere in its opinion it stressed that in order to establish "*good cause*" for suspension of the license, something more must be shown than that many of the patrons were homosexuals and used the premises "as a meeting place." 234 P.2d, at p. 971.

After the *Stoumen* case was decided, the California Legislature enacted the provision in section 24200, subdivision (e) of the Business and Professions Code under which licensed premises were prohibited from being used as resorts for "*sexual perverts.*" In *Vallerga v. Dept. of Alcoholic Beverage Con.*, 53 Cal. 2d 313, 1 Cal. Rptr. 494, 347 P.2d 909 (1959) a license was revoked because the licensee had permitted his premises to become a resort for homosexuals. The revocation was set aside by the California Supreme Court which held that the legislative provision was unconstitutional \*337 under *Stoumen*. The court also considered the contention that, apart from the provision declared unconstitutional, the revocation could be sustained on the ground that

continuance of the license would be "*contrary to public welfare and morals*" within the lower court holdings in *Nickola v. Munro*, 162 Cal. App. 2d 449, 328 P.2d 271 (1958) and *Kershaw v. Department of Alcoholic Beverage Cont.*, 155 Cal. App. 2d 544, 318 P.2d 494 (1957); in this connection it said:

*"In the Nickola case the court held generally that seeking sexual gratification in a public tavern with another of the same sex would offend the moral sense of the general public. The court stated, 162 Cal. App.2d at page 457, 328 P.2d at page 276: 'There are many things that can be done in the privacy of the home which may not be illegal, but if done in a public tavern are directly offensive to public morals and decency, and demonstrate that the participants are sex perverts. The continuance of the license under such circumstances "would be contrary to public welfare or morals" as provided in our Constitution. \* \* \* Further than that we do not have to go.' Conduct which may fall short of aggressive and uninhibited participation in fulfilling the sexual urges of homosexuals, reported in some instances (see Kershaw v. Department of Alcoholic Bev. Control, supra, 155 Cal. App. 2d 544, 547-548, 318 P.2d 494), may nevertheless offend good morals and decency by displays in public which do no more than manifest such urges. This is not to say that homosexuals might properly be held to a higher degree of moral conduct than are heterosexuals. But any public display which manifests sexual desires, whether they be heterosexual or homosexual in nature may, and historically have been, suppressed and regulated in a moral society." 1 Cal. Rptr., at p. 497, 347 P.2d, at p. 912.*

The court in *Vallerga* was of the opinion that the record before it contained sufficient evidence of overtly offensive acts within the licensed premises upon which specific and individualized charges of conduct "*contrary to public welfare or morals*" could have been preferred against the licensee. But no such charges had been preferred and the only charge preferred, namely, permitting the premises to become a resort for homosexuals in violation of subdivision (e), was the one held by the court to be constitutionally infirm. The court's setting aside of the revocation was presumably without \*338 prejudice to the right to proceed against the licensee on specific and individualized charges and proof of overt acts within the licensed premises offensive to "*good morals and decency*." See 1 Cal. Rptr., at pp. 498-499, 347 P.2d, at pp. 913-914; cf. *Sabes v. City of Minneapolis*, 265 Minn. 166, 120 N.W.2d 871, 878 (1963).

While the New York cases contain obscurities, many of them seem to take an approach comparable to that taken by the California Supreme Court. Thus in *People v. Arenella*, 139 N.Y.S.2d 186 (N.Y.C. Mag. Ct. 1954) the court, in dealing with a criminal charge that a licensee had allowed his premises to become disorderly, differentiated cases deemed disorderly where the premises were frequented by homosexuals in "*open and notorious manner, for the purpose of soliciting others to commit lewd and indecent acts*" from others, not deemed disorderly, where the evidence established nothing more than that homosexuals patronized the premises without engaging in prohibited acts therein. 139 N.Y.S.2d, at p. 189. Similarly in *Kerma Restaurant Corporation v. State Liquor Authority*, 27 A.D.2d 918, 278 N.Y.S.2d 951 (1966) the court, while sustaining the revocation of a license on the basis of solicitation and other overtly offensive acts within the licensed premises, acknowledged that the "*mere congregation of homosexuals, where there is no breach of the peace, does not make the premises disorderly*" within the meaning of New York's Alcoholic Beverage Control Law. 278 N.Y.S.2d, at p. 952. See *In re Farley*, 217 N.Y. 105, 111 N.E. 479, 481 (1916); cf. *Lynch's Builders Restaurant, Inc. v. O'Connell*, 303 N.Y. 408, 103



N.E.2d 531 (1952); *Fulton Bar & Grill, Inc. v. State Liquor Authority*, 11 A.D.2d 771, 205 N.Y.S.2d 37 (1960); *Gilmer v. Hostetter*, 20 A.D.2d 586, 245 N.Y.S.2d 252 (1963).

In *Re Revocation of Licence of Clock Bar, Inc.*, 85 Dauph. 125 (Pa. 1966) the court sustained a suspension grounded on evidence of improper solicitations by homosexuals at the licensed premises. However, in the course of its opinion it \*339 pointed out there was "*no law which forbids homosexuals from being patrons of licensed premises*," that the mere, though open, congregation of homosexuals at the licensed premises would not sustain a charge that the licensee maintained "*a disorderly house*," and that homosexuals at licensed premises become objectionable only "*when they make a nuisance of themselves*" by improper solicitation or other overtly offensive conduct. 85 Dauph. at 131. See *Sesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); but cf. *Inman v. City of Miami*, 197 So. 2d 50 (Fla. Dist. Ct. App. 1967), petition for certiorari filed, 36 U.S.L.W. 3163 (U.S. Oct. 11, 1967) (No. 717).

Though in our culture homosexuals are indeed unfortunates, their status does not make them criminals or outlaws. Cf. *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962). So long as their public behavior violates no legal proscriptions they have the undoubted right to congregate in public. And so long as their public behavior conforms with currently acceptable standards of decency and morality, they may, at least in the present context, be viewed as having the equal right to congregate within licensed establishments such as taverns, restaurants and the like. See *Stoumen v. Reilly*, *supra*, 234 P.2d, at p. 971. In sustaining the suspension of One Eleven's license, the Appellate Division took the position that it was not concerned with the rights of the patrons since technically the legal issue before it was the validity of Rule 5 under which the license was suspended. But the asserted rights of the homosexuals to assemble in and patronize licensed establishments are intertwined with the asserted rights of licensed establishments to serve them. Surely in these circumstances, the licensees are properly to be viewed as having standing to seek vindication of the various rights involved in order that the Court's ultimate determination may soundly rest on the complete mosaic. Cf. *Griswold v. Connecticut*, 381 U.S. 479, 481, 85 S. Ct. 1678, 14 L. Ed. 2d 510, 512 (1965); *NAACP v. Alabama*, 357 U.S. 449, 458, 78 S. Ct. 1163, \*340 2 L. Ed. 2d 1488, 1497 (1958); *Barrows v. Jackson*, 346 U.S. 249, 255, 73 S. Ct. 1031, 97 L. Ed. 1586, 1594 (1953); *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S. Ct. 571, 69 L. Ed. 1070, 1078 (1925); *Sedler, Standing to Assert Constitutional Jus Tertii in the Supreme Court*, 71 Yale L.J. 599, 626 (1962).

The Division of Alcoholic Beverage Control, stressing the acknowledged constitutional and statutory breadth of its regulatory powers (*Boller Beverages, Inc. v. Davis*, 38 N.J. 138, 150 (1962); *Guill v. Mayor and Council of City of Hoboken*, 21 N.J. 574 (1956)), contends that the mere congregation of apparent homosexuals in taverns is contrary to the public welfare and may therefore reasonably be prohibited under its wide police powers. Cf. *Jeanne's Enterprises, Inc. v. State of N.J., etc.*, *supra*, 93 N.J. Super., at p. 232. It points to the fact that the very term "*apparent homosexuals*" contemplates effeminate behavioral characteristics, such as those described earlier in this opinion, but apparently it concedes, as it must in the light of the times, that such behavioral characteristics without more, would not constitute overt conduct offensive to current standards of morality and decency. It expresses various fears which we have carefully considered but which lack significant support in the records before us or in the available materials on the subject.

Thus the division suggests that the presence of apparent homosexuals in so-called "*gay*" bars may serve to harm the occasional non-homosexual patrons who happen to stray there but it produces nothing to rebut the expert testimony or the published writings to the contrary. See Cory and

LeRoy, *supra*, at p. 121; Schur, *supra*, at p. 87. It further suggests that offensive conduct by apparent homosexuals within the licensed premises "*may lead to violence*" against them by non-homosexuals but this ignores the licensee's comprehensive capacity and responsibility, at the peril of its license, for precluding offensive conduct and for conducting its establishment in lawful and orderly fashion. See *In re Olympic, Inc.*, 49 N.J. Super. 299, 305-09 (App. Div.), *certif. denied*, 27 \*341 N.J. 279 (1958). Finally, it points out that it has consistently tried "*to increase public respect and confidence in the liquor industry*" (cf. *X-L Liquors v. Taylor*, 17 N.J. 444, 451 (1955)) and suggests that permitting the congregation of apparent homosexuals, even though carefully supervised, will impair such public respect and confidence. But here again it furnishes nothing affirmative in support of its position which appears to disregard the burgeoning movement towards greater tolerance and deeper understanding of the subject. See Mosk, *supra*, 13 U.C.L.A.L. Rev., at p. 645; Model Penal Code § 207.5, Comment (Tent. Draft No. 4, 1955).

When in the 1930's the Department of Alcoholic Beverage Control first took its severe position, it acted on the assumption that the mere congregation of apparent homosexuals had to be outlawed to achieve effective control. It of course had no experience to support the assumption but it took the prohibitory course as the safer one for the then fledgling system. At the time, the interests of the patrons in question were given little consideration and were in any event overwhelmed by the then highly felt transitional need for sweeping restraint. Now, in the 1960's, the transitional need as such is long past and it is entirely appropriate that full sweep be given to current understandings and concepts. Under them it seems clear that, so long as the division can deal effectively with the matter through lesser regulations which do not impair the rights of well behaved apparent homosexuals to patronize and meet in licensed premises, it should do so. Such narrower course would be consonant with the settled and just principle that restrictions adopted in the exercise of police powers must be reasonable and not go beyond the public need. See *N.J. Good Humor, Inc. v. Bradley Beach*, 124 N.J.L. 162, 168 (E. & A. 1940); *Reingold v. Harper*, 6 N.J. 182, 192 (1951); cf. *Griswold v. Connecticut*, *supra*, 381 U.S., at pp. 485-486, 85 S. Ct. 1678, 14 L.Ed.2d, at pp. 515-516; *NAACP v. Alabama*, \*342 Flowers, 377 U.S. 288, 307, 84 S. Ct. 1302, 12 L. Ed. 2d 325, 338 (1964).

It must be borne in mind that the division has produced nothing to support any need for continuance of its flat prohibition. Nor has it produced anything to indicate that it could not readily prepare and enforce a fair and sensible regulation which, while permitting apparent homosexuals to assemble in and patronize licensed establishments, prohibits overtly indecent conduct and public displays of sexual desires manifestly offensive to currently acceptable standards of propriety. Such a regulation might well be adopted forthwith to the end that future proceedings would rightly be based on specific charges of improper conduct at the licensed premises rather than, as here, upon general charges of mere congregation which we deem to be unreasonable and legally unsupportable. In the meantime, the discipline imposed in the three cases before us must be set aside, without prejudice, however, to any new charges which the division may prefer against the licensees, or any of them, clearly describing the individual acts alleged to be violative of the provisions in Rule 5 aimed at lewd and immoral conduct within the licensed premises. See *Vallerga v. Dept. of Alcoholic Beverage Cont.*, *supra*, 1 Cal. Rptr., at pp. 498-499, 347 P.2d, at pp. 913-914.

Reversed.

PROCTOR, J. (concurring).

Since the charges against the three taverns did not specify any particular offensive acts by the patrons, I concur with the majority opinion. However, I wish to emphasize that, although well-behaved homosexuals cannot be forbidden to patronize taverns, they may not engage in any conduct which would be offensive to public decency. In the record before us it appears that there was evidence of conduct (men kissing each other on the lips, etc.) which would form the basis for disciplinary action at least against One Eleven and Murphy's had they properly been charged. A tavern should not provide an arena for \*343 the behavior disclosed by this record. I appreciate that the majority opinion does not say that such conduct will be tolerated, but nonetheless I am expressing my positive view that it should not be.

For reversal Chief Justice WEINTRAUB and Justices JACOBS, FRANCIS, PROCTOR, SCHETTINO and HANEMAN 6.

For affirmance None.

#### NOTES

[\*] The authors referred to by Dr. Schur are Cory and LeRoy who at pages 121-122 of their book entitled *The Homosexual and His Society* had this to say:

*"It can be argued that gay bars spread homosexuality and the elimination of them will help arrest this development. However, people who argue this way usually have little or no understanding of the problem and know very little about such bars. Most of those who go to gay bars are already homosexual and those who are not have no interest in remaining in these places for long, and seldom return. It is difficult to imagine a person walking into a gay bar and becoming homosexual, if he had not already been favorably disposed to such activity."*

#### SECTION 4.

#### OUT-OF-STATE COURT CASES MENTIONED IN THE NJ SUPREME COURT CASE

California 1951: *Stoumen v Reilly* 37 Cal 2d 713, 234 P.2d 969

California 1959: *Vallerga v. Dept. of Alcoholic Beverage Con.*, 53 Cal. 2d 313

New York 1967: *Kerma v Liq Auth* NY 2d 111

# Stoumen v. Reilly

[S. F. No. 18310. In Bank. Aug. 28, 1951.]

SOL M. STOUMEN, Appellant, v. GEORGE R. REILLY et al., Respondents.

## COUNSEL

Morris Lowenthal for Appellant.

Fred N. Howser, Attorney General, and J. Albert Hutchinson, Deputy Attorney General, for Respondents.

## OPINION

GIBSON, C.J.

The State Board of Equalization suspended, for an indefinite period, plaintiff's general on-sale license to sell alcoholic beverages at the Black Cat Restaurant, **[37 Cal. 2d 715]** and this appeal is taken from a judgment denying a writ of mandate to compel the board to annul its order and reinstate the license.

The accusation filed against plaintiff was in two counts and alleged violations of sections 58 and 61(a) of the Alcoholic Beverage Control Act. fn. \* (2 Deering's Gen. Laws, 1944, Act 3796.) Count one charged that plaintiff permitted his premises to be used as a disorderly house for purposes injurious to public morals. County two charged that one of plaintiff's employees sold beer to a person under the age of 21 years.

The hearing officer of the board, who received the evidence, found that plaintiff "kept and permitted his licensed premises to be used as a disorderly house in that ... persons of known homosexual tendencies patronized said premises and used said premises as a meeting place," and that beer was sold to a minor as alleged. He concluded that plaintiff had violated sections 58 and 61(a) and recommended "indefinite suspension" of the

license. The findings and recommendation were adopted by the board as its decision. Thereafter the superior court denied a writ of mandate after reviewing the matter on the record before the board. (See *Covert v. State Board of Equalization*, 29 Cal. 2d 125, 131 [173 P.2d 545].)

[1a] The principal question with respect to count one is whether the evidence is sufficient to warrant suspension of plaintiff's license. Several police officers testified that many of the patrons of the Black Cat were homosexuals and that it was reputed to be a "hangout" for such persons. A number of people were arrested there, some for vagrancy and some because they "demonstrated homosexual actions," but there was no showing that any of those arrested were convicted. There was no evidence of any illegal or immoral conduct on the premises or that the patrons resorted to the restaurant for purposes injurious to public morals. **[37 Cal. 2d 716]**

[2] Section 58 of the act makes it a misdemeanor for a licensee to permit his restaurant and bar to be used as a disorderly house or place "to which people resort for purposes which are injurious to public morals." The terms of the section refer to conduct on the premises or resort thereto for improper purposes, and it is clear that it would be necessary to read something into that section before it could be construed as an attempt to regulate mere patronage by any particular class of persons without regard to their conduct on the premises. (Cf. *Orloff v. Los Angeles Turf Club, Inc.*, 36 Cal. 2d 734 [227 P.2d 449].) [3] Members of the public of lawful age have a right to patronize a public restaurant and bar so long as they are acting properly and are not committing illegal or immoral acts; the proprietor has no right to exclude or eject a patron "except for good cause," and if he does so without good cause he is liable in damages. (See Civ. Code, §§ 51, 52.) In analogous cases it has been held that a liquor license could not be revoked on the ground that prostitutes had dined in the licensee's restaurant (*In re Farley*, 217 N.Y. 105 [111 N.E. 479]) and that a conviction of maintaining a bawdy house was not supported by evidence that women of loose or immoral character had obtained lodging in defendant's hotel (*Patterson v. State*, 9 Okla.Cr. 564 [132 P. 693, 695]). In the *Patterson* case the court pointed out that such women are human beings entitled to shelter and that it is not a crime to give them lodging unless it is done for immoral purposes. [1b] The same reasoning applies to the patronage of a public restaurant and bar by homosexuals, and mere proof of patronage, without proof of the commission of illegal or immoral acts on the premises, or resort thereto for such purposes, is not sufficient to show a violation of section 58.

The fact that the Black Cat was reputed to be a "hangout" for homosexuals indicates merely that it was a meeting place for such persons. (See Webster's New Internat. Dict.) Unlike

evidence that an establishment is reputed to be a house of prostitution, which means a place where prostitution is practiced and thus necessarily implies the doing of illegal or immoral acts on the premises, testimony that a restaurant and bar is reputed to be a meeting place for a certain class of persons contains no such implication. Even habitual or regular meetings may be for purely social and harmless purposes, such as the consumption of food and drink, and it **[37 Cal. 2d 717]** is to be presumed that a person is innocent of crime or wrong and that the law has been obeyed. (Code Civ. Proc., § 1963, subds. 1, 33.)

[4] Defendants contend that even though the evidence is insufficient to show a violation of section 58, the license could be suspended under section 22 of article XX of the Constitution which provides that the board "shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals." (See, also, § 40, subd. 1, of the act, which contains a similar provision.) The board's discretion under section 22, however, is not absolute but must be exercised in accordance with the law, and the provision that it may revoke a license "for good cause" necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals. (See *Covert v. State Board of Equalization*, 29 Cal. 2d 125, 131-132 [173 P.2d 545].) [5] In order to establish "good cause" for suspension of plaintiff's license, something more must be shown than that many of his patrons were homosexuals and that they used his restaurant and bar as a meeting place.

[6] As to count two of the accusation, the record shows that a young man who was under age visited the Black Cat with an adult companion and purchased and consumed beer on the premises, and there is sufficient support for the finding that plaintiff's employee sold beer to a minor in violation of section 61(a) of the act. A separate penalty was not assessed for this offense, the order of indefinite suspension being based upon the finding that plaintiff had violated both sections 58 and 61(a). No prior disciplinary action had ever been taken against plaintiff, and there was evidence that the minor, who was nearly 20 years of age, looked to be 21. It appears that the usual punishment imposed under such circumstances varies from a reprimand to a limited suspension of not more than 30 days. Since it does not seem likely that plaintiff's license would have been suspended for an indefinite period on this charge alone, the matter should be remanded to the board.

We find it unnecessary to pass upon other contentions made by the plaintiff with respect to the propriety of the board's action. **[37 Cal. 2d 718]**

The judgment is reversed with instructions to the trial court to grant a peremptory writ of mandate directing the board to set aside its order of suspension and to take such further



action as may be proper.

Shenk, J., Edmonds, J., Carter, J., Traynor, J., Schauer, J., and Spence, J., concurred.

FN \*. Section 58 provides: "Every licensee or agent or employee of any licensee who keeps or permits to be used or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience or safety shall be guilty of a misdemeanor."

Section 61(a) provides: "Every person who sells, furnishes, gives, or causes to be sold, furnished or given away any alcoholic beverage to any person under the age of twenty-one years shall be guilty of a misdemeanor."

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# Vallerga v. Dept. Alcoholic Bev. Control

[S.F.No. 20285. In Bank. Dec. 23, 1959.]

ALBERT VALLERGA et al. Appellants, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL et al., Respondents.

## COUNSEL

Golden & Stefan and J. Bruce Fratis for Appellants.

Morris Lowenthal, Juliet Lowenthal, Karl D. Lyon and Charles L. Barnard as Amici Curiae on behalf of Appellants.

Edmund G. Brown and Stanley Mosk, Attorneys General, Charles A. Barrett and Wiley W. Manuel, Deputy Attorneys General, for Respondents.

## OPINION

WHITE, J.

Albert Vallerga and Mary Azar, coowners of an on-sale general liquor license, appeal from a judgment denying their application for mandamus to compel the respondent Department of Alcoholic Beverage Control to set aside its revocation of their license. The Alcoholic Beverage Control Appeals Board affirmed the order of revocation.

The licensees are the owners of the First and Last Chance Bar located in Oakland. On March 7, 1956, an accusation was filed against them as operators of the bar by an agent of the Department of Alcoholic Beverage Control, charging them with a violation of section 24200, subdivision (e) of the Business and Professions Code. That section provides in part that a basis for a liquor license suspension or revocation is "Where the portion of the

premises of the licensee upon which the activities permitted by the license are conducted are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panders, or sexual perverts." It provides further that in "addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, pimps, panders, or sexual perverts." The accusation alleged that during the period in question, "the portions of the premises of the licensees, where the activities permitted by the license are conducted, have been and still are a resort for sexual perverts, to wit: Homosexuals."

A duly appointed hearing officer found that the accusations were true; that one of the licensees frankly admitted that the "premises were established as a resort for lesbians and homosexuals, and that he was aware that said premises were a hang-out for homosexuals." The hearing officer concluded that "[g]rounds constituting a basis for the suspension or revocation of the license issued to the above-named licensees for the above-described premises have been established under the provisions of Section 24200(e) of the Alcoholic Beverage Control [53 Cal. 2d 316] Act. ... It is further determined that by reason of the facts above found the continuance of the said license would be contrary to public welfare and morals within the meaning of said words as used in Article XX, Section 22, of the California Constitution."

Section 22 of article XX of the Constitution provides in part, that the "department shall have the power in its discretion, to deny, suspend or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals. ..." The recommendation of revocation of the hearing officer was adopted by the department.

The licensees, and amici curiae appearing in their behalf, contend that the accusation cannot properly be based on section 24200, subdivision (e) of the Business and Professions Code as that section is unconstitutional for reasons stated by this court in *Stoumen v. Reilly* (1951), 37 Cal. 2d 713 [234 P.2d 969]. That case concerned a revocation for an alleged violation of section 58 of the Alcoholic Beverage Control Act, now section 25601 of the Business and Professions Code. The section made it a misdemeanor for a licensee to suffer his premises to be used as a place of resort for purposes injurious to the public morals or health. There was evidence that homosexuals met on and patronized the premises with the licensee's knowledge, but there was no evidence of misconduct involving homosexuals. In reversing a judgment denying an application for mandamus, this court stated at page 716: "Members of the public of lawful age have a right to patronize a public restaurant and bar

so long as they are acting properly and are not committing illegal or immoral acts; the proprietor has no right to exclude or eject a patron 'except for good cause,' and if he does so without good cause he is liable in damages. (See Civ. Code, §§ 51, 52.) In analogous cases it has been held that a liquor license could not be revoked on the ground that prostitutes had dined in the licensee's restaurant (In re Farley, 217 N.Y. 105 [111 N.E. 479]) and that a conviction of maintaining a bawdy house was not supported by evidence that women of loose or immoral character had obtained lodging in defendant's hotel (Patterson v. State, 9 Okla. Cr. 564 [132 P. 693, 695]). In the Patterson case the court pointed out that such women are human beings entitled to shelter and that it is not a crime to give them lodging unless it is done for immoral purposes. The same reasoning applies to the patronage [53 Cal. 2d 317] of a public restaurant and bar by homosexuals, and mere proof of patronage, without proof of the commission of illegal or immoral acts on the premises, or resort thereto for such purposes, is not sufficient to show a violation of section 58."

Subdivision (e) of section 24200 was added to the Business and Professions Code in 1951, subsequent to the decision in the Stoumen case. (Stats. 1955, ch. 1217, p. 2230.) When called upon to construe that subdivision the courts have done so in conformity with the holding in the Stoumen case, and the general rule of construction that where possible legislation will be construed to avoid unconstitutional applications. Thus, in 1957, a revocation based upon this subsection was sustained in Kershaw v. Department of Alcoholic Beverage Control, 155 Cal. App. 2d 544 [318 P.2d 494], where there was conduct on the premises by homosexuals who openly sought and obtained sexual satisfaction by aberrant methods. The court declined to consider the issue as to the constitutionality of the section had only patronage been involved, remarking, by way of dictum, that "It would seem a fair inference to conclude that in making ... [this] amendment the Legislature acted in the light of and consistently with the rule of the Stoumen case, by inference excluding from the coverage of subdivision (e) the type of conduct which the Supreme Court had declared harmless and not inimical to public welfare and morals. ... It involves a question that need not be and is not decided at this time." (Id at p. 550.)

The issue was again raised in 1958 in Nickola v. Munro, 162 Cal. App. 2d 449 [328 P.2d 271], where the court again held that the conduct involved in that case supported the finding that many of the patrons, to the knowledge of the licensee, committed acts which were contrary to the public welfare or morals. The question of the construction of subdivision (e) of section 24200 was again referred to, and the court stated that the Legislature did not intend that the limitations of the Stoumen case were to be disregarded in the application of subdivision (e), and that as so construed subdivision (e) was constitutional.

[1a] We are not persuaded by the dicta in the Kershaw and Nickola cases relating to the construction of subdivision (e). The language of that subdivision is too clear and unambiguous to permit any other meaning than that which the literal language conveys. Not only does it declare that the grounds for revocation are established if the prohibited classes "resort" on the premises, but it further makes the legislative **[53 Cal. 2d 318]** intent all the more apparent by providing that the character of the premises "as a resort" may be proved by general reputation. To hold that by such language the Legislature intended that grounds for revocation existed only when objectionable conduct took place on the premises would constitute judicial legislation under the guise of interpretation. This we are not permitted to do because it would amount to an invasion of a field committed in its entirety to the legislative branch of government. [2] In *People v. One 1940 Ford V8 Coupe*, 36 Cal. 2d 471 [224 P.2d 677], it is held at page 475: "In construing the statutory provisions a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does not appear from its language. The court is limited to the intention expressed. (*Seaboard Acceptance Corp. v. Shay*, 214 Cal. 361, 365-366 [5 P.2d 882]; *People v. One 1941 Buick 8 Four Door Sedan*, 63 Cal. App. 2d 661, 667 [147 P.2d 401].)" And in *Bonwell v. Justice Court*, 148 Cal. App. 2d 906 [307 P.2d 716], the court rejected a contention that a statute be interpreted so as to require knowledge of unlawful activity in order that it might be held constitutional, the court stating: "We are here limited to the construction of the plain language of the section as enacted and to the intention therein expressed." (*Id* at p. 908.) [1b] It is concluded, therefore, that subdivision (e) purports to authorize revocation of a license without requiring anything more to be shown than that the premises are a resort for certain classes of persons, and as such is unconstitutional for the reasons set forth in the *Stoumen* case. Language in the *Kershaw* and *Nickola* cases contrary to this construction of subdivision (e) of section 24200 is disapproved.

It is not intended to imply by the foregoing that the *Kershaw* and *Nickola* cases were improperly determined. In both of those cases the court held that the conduct there involved was such that the continuance of the license would be contrary to the public welfare or morals, within the meaning of section 22 of article XX of the Constitution. [3] The provisions of section 22 are made self-executing, and revocation of a license may be based on that ground alone if the licensee is otherwise accorded due process of law. (See also *Bus. & Prof. Code*, § 24200, subd. (a).) In the *Stoumen* case, in considering the applicability of the constitutional provision as grounds for revocation by the board, the court stated that the latter's discretion was not absolute "but must be exercised **[53 Cal. 2d 319]** in accordance with the law, and the provision that it may revoke a license 'for good cause' necessarily implies that its decisions should be based on sufficient evidence and that

it should not act arbitrarily in determining what is contrary to public welfare or morals. (See *Covert v. State Board of Equalization*, 29 Cal. 2d 125, 131-132 [173 P.2d 545].) In order to establish 'good cause' for suspension of plaintiff's license, something more must be shown than that many of his patrons were homosexuals and that they used his restaurant and bar as a meeting place." In the *Kershaw* and *Nickola* cases the additional evidence beyond that of mere use of the premises was abundantly present, and revocation of the licenses on the constitutional ground was justified in each case.

It is suggested that the record in the present case justified a conclusion that the continuance of the license will be "contrary to public welfare and morals," and that the revocation thereof can be justified on constitutional grounds, as in the *Kershaw* and *Nickola* cases. In the *Nickola* case the court held generally that seeking sexual gratification in a public tavern with another of the same sex would offend the moral sense of the general public. The court stated at page 457: "There are many things that can be done in the privacy of the home which may not be illegal, but if done in a public tavern are directly offensive to public morals and decency, and demonstrate that the participants are sex perverts. The continuance of the license under such circumstances 'would be contrary to public welfare or morals' as provided in our Constitution. ... Further than that we do not have to go." [4] Conduct which may fall short of aggressive and uninhibited participation in fulfilling the sexual urges of homosexuals, reported in some instances (see *Kershaw v. Department Alcoholic Beverage Control*, supra, 155 Cal. App. 2d 544, 547-548), may nevertheless offend good morals and decency by displays in public which do no more than manifest such urges. This is not to say that homosexuals might properly be held to a higher degree of moral conduct than are heterosexuals. But any public display which manifests sexual desires, whether they be heterosexual or homosexual in nature may, and historically have been, suppressed and regulated in a moral society.

Such displays were put in evidence in the present case. Admittedly, the licensees' patrons were almost exclusively homosexuals and lesbians. Their sexual proclivities were displayed in that the majority of the female customers dressed in **[53 Cal. 2d 320]** mannish attire, and patrons usually paired off, men with men, and women with women. During the period of surveillance police officers testified that they observed women dancing with other women, and women kissing other women. A policewoman testified that as she and a companion policewoman sat at a table a female patron dressed in mannish attire sat down and said to her companion, "You're a cute little butch." Later in the evening this patron kissed the policewoman, and a waitress came by and warned the participants that if they wanted to continue such activity they should go into the restroom. On a different occasion the policewoman observed a person who appeared to be a man by her dress and makeup

but who, according to the waitress, was actually a woman, make use of the women's restroom.

A police officer testified that he observed a male patron and a grey- haired man approach, embrace each other at the bar, put their foreheads together while they carried on a whispered conversation, and that the grey- haired man then kissed the other and stated to the bartender: "Arley and I are going steady." This officer also testified that he observed a person dressed and made up as a man and who appeared to be a man, but who, the witness was informed, was in fact a woman, making use of the women's restroom.

The foregoing is sufficient evidence of a display of sexual desires and urges which, when made in a public place as a continuing course of conduct, could reasonably be found by the trier of fact to be "contrary to public welfare or morals." It is apparent in the present case, however, that the foregoing evidence was not relied upon by the finder of fact in arriving at the conclusion that continuance of the license would be contrary to public welfare and morals. The only findings in the present case were that the portion of the premises where the activities permitted by the license were conducted were "a resort for sexual perverts, to wit, homosexuals" and that the licensees were aware of that fact. It is true that a conclusion was drawn that the continuance of the license would be "contrary to public welfare and morals within the meaning of said words as used in Article XX, section 22, of the California Constitution," but that determination was made only "by reason of the facts above found" and not in reliance on the factual matters testified to by the police officers. Portions of that testimony were disputed by other testimony, and insofar as the record shows the trier of fact may well have determined that the circumstances testified to did not exist. **[53 Cal. 2d 321]**

[5] It is apparent also that the accusation, heretofore set out, is insufficient to charge the licensees with conduct subjecting their license to revocation other than pursuant to subdivision (e) of section 24200 of the Business and Professions Code. There is no hint in the language of the accusation which could put the licensees on notice that their license might be revoked on the ground that its continuance would be contrary to public welfare or morals, if evidence of such a finding were produced at the hearing. To sustain the revocation of the license herein under the aforesaid constitutional provision would violate due process of law in view of the limited charge contained in the accusation and findings made thereon. Nor can we affirm the revocation of a license under a statutory provision (Bus. & Prof. Code, § 24200, subd. (e)) which purports to authorize a revocation upon mere proof of resorting to or patronage of a licensed premises without proof of illegal, immoral or indecent acts on such premises.



Section 22, article XX of our Constitution vests the Department of Alcoholic Beverage Control with authority to institute disciplinary proceedings against a licensee and to revoke his license upon determination "for good cause" that the continuance of such license would be "contrary to public welfare or morals." Nothing we have herein stated is to be construed as infringing upon such authority. We hold only that an accusation filed under section 24200, subdivision (e) of the Business and Professions Code, and findings made thereunder, will not for the reasons above stated, sustain revocation or suspension of a license.

The judgment is reversed with directions to the court below to grant a peremptory writ of mandate directing the Department of Alcoholic Beverage Control to set aside its order of revocation.

Gibson, C. J., Traynor, J., Schauer, J., Spence, J., and McComb, J., concurred.

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# MTR. OF KERMA REST. CORP. v. Liq. Auth.

**21 N.Y.2d 111 (1967)**

In the Matter of Kerma Restaurant Corporation, Appellant, v. State Liquor Authority, Respondent.

**Court of Appeals of the State of New York.**

Argued October 30, 1967.

Decided December 7, 1967.

Isidore Silver for appellant.

Stanley Stein, Hyman Amsel and Emanuel D. Black for respondent.

Chief Judge FULD and Judges VAN VOORHIS and BURKE concur with Judge BERGAN; Judge KEATING dissents and votes to affirm in a separate opinion in which Judges SCILEPPI and BREITEL concur.

\*<sup>114</sup>BERGAN, J.

Petitioner's retail liquor license has been annulled by respondent on a charge that it suffered or permitted the licensed premises to become disorderly (Alcoholic Beverage Control Law, § 106, subd. 6) "in that it permitted homosexuals, degenerates and/or undesirables to be and remain on the licensed premises and conduct themselves in an offensive and indecent manner contrary to good morals on 2/4/66".

There is no proof in the record of any breach of the peace. The Appellate Division observed: "While we agree the mere congregation of homosexuals, where there is no breach of the

peace, does not make the premises disorderly within the meaning of subdivision 6 of section 106 of the Alcoholic Beverage Control Law, the record substantiates the charge." Justice McGIVERN noted in dissent that there "simply is not substantial evidence to warrant cancellation of the license on the grounds that the premises were disorderly." This seems to be an accurate appraisal of the record.

In the first place there is no evidence to attribute to the licensee knowledge that the police officer had been solicited by a customer for homosexual purposes and the proof of this transaction must be eliminated from consideration as offering any support of the finding of disorder in the premises.

There were 40 customers in the bar attended by one bartender, the petitioner's president, Mrs. Weinzierl. She, as the policeman testified, "was busy tending bar". The conversation in which the policeman testified he was solicited occurred at a jukebox near the front window. There is no proof that the bartender was anywhere near this conversation or in any position to overhear it, and knowledge of its occurrence and its disorderly potential has not been brought home to the bartender.

The decisions make it clear that this personal conversation between two men in the front of premises crowded with patrons and serviced by one busy bartender is not enough to attribute \*115 responsible knowledge to the licensee. (Matter of Abatz v. State Liq. Auth., 15 N Y 2d 643; Matter of Migliaccio v. O'Connell, 307 N.Y. 566; Matter of Stanwood United v. O'Connell, 306 N.Y. 749.)

It is manifest from the findings of the deputy commissioner that this solicitation was an essential basis of the decision to sustain the charge. He said: "I find that the patronage was openly homosexual in nature, that the officer was solicited by one of the male patrons herein for lewd and indecent purposes, that the officer and said male then ordered two (2) glasses of beer and left."

The policeman who made the arrest after he had left the premises and who came back later to issue a criminal summons to Mrs. Weinzierl for allowing the premises "to become disorderly" based this charge entirely on the fact that he had arrested a male for violation of the Penal Law and "defendant was present and in charge". This criminal charge was dismissed. The other proof in the proceeding is insufficient to establish the premises were permitted to become disorderly. In some measure this part of the charge is based on the policeman's observations of the dress and appearance of "several of the patrons" and of "three specific cases". These several had "makeup on, eye mascara, some with lipstick". The

three specific cases had "hip hugger pants, slacks \* \* \* their shirts out of their trousers" showing "a bare midriff".

Indulgence in the inference that these "several" and these "three specific" men in a grill containing 40 people were, from their dress and makeup, homosexuals does not support the additional inference that they would create disorder. It is reasonable to think that even though he dresses strangely a homosexual may be orderly in the sense in which the Alcoholic Beverage Control Law defines order.

The policeman also observed "three instances" in which one male "would be" sitting on another male's lap "at the tables". He noticed also "three instances" where the males on the laps kissed the other male on the face and neck. There is no proof that the bartender was in a position to observe, or did observe, these "three instances". For the rest: "I observed several of the males when they walked away their hips, keep their hands on their hips. Several of the males' voices \*116 were very effeminate and high pitched, and talked with a lisp." These "observations" are not brought home to the licensee.

But assuming from the proof as a whole that the licensee knew some homosexuals were in the place, is this disorder in the absence of some proof tending to actual disorder? If homosexual solicitation could be brought home to the licensee that would be enough; but it is certainly not demonstrated in this case, and the rest of the proof tending to disorder is insufficient. (See opinion of Justice COHN at the Appellate Division in *Matter of Stanwood United v. O'Connell*, 283 App. Div. 79, 80, 81, affd. 306 N.Y. 749, cited supra). The record before us is weaker on the issue of general potential disorder than that in *Matter of Migliaccio v. O'Connell* (supra).

The order should be reversed and the determination of respondent annulled, with costs.

KEATING, J. (dissenting).

There is no doubt, as the majority points out, that proof of a solicitation for lewd and immoral purposes is not sufficient by itself to justify annulment of a liquor license. The statute states: "No person \* \* \* shall suffer or permit \* \* \* such premises to become disorderly." It is, therefore, incumbent upon the Authority to show that the licensee knew or should have known of the disorderly conduct on the premises. (See *Matter of Migliaccio v. O'Connell*, 307 N.Y. 566.)

The police officer testified that there were about 30 persons on the premises, all of them male. He stated: "I saw several of the patrons with makeup on, eye mascara, some with lipstick. \* \* \* I observed two three instances where one male would be sitting on another

male's lap at the tables. I observed three instances where these three same males previously described[\*] kissed on the face and neck the males in whose laps they were sitting."

It is inconceivable that overt behavior such as this escaped the notice of the licensee, particularly since there were only 30 persons present.

\*117In any event, the issue is whether she should have been aware of what was happening on her premises. In defining the quantum of evidence necessary to sustain the annulment of a license for violation of subdivision 6 of section 106 we have held:

"[S]ubstantial evidence of disorderliness beyond a brief single occurrence of which the licensee may or may not have been aware should be presented so as to establish that the licensee should have known that a disorderly condition prevailed." (Matter of Migliaccio v. O'Connell, supra, p. 569; emphasis supplied.)

Even if we credited the licensee's statements that she did not, in fact, observe the behavior which the officer described, nevertheless his description of the premises was such that it was not unreasonable for the Authority to conclude that the licensee should have known of the disorderly conduct taking place in her establishment.

Moreover, besides the public necking between males, there is an additional factor which tends to show notice on the part of the licensee. The police officer testified that about a half hour after he entered the premises, the licensee locked the door. After this, she let in certain persons by means of a buzzer which was located behind the bar. Several times, she refused to buzz someone in, but did so after he was identified to her by one of the male patrons. Thus, to a certain extent, the patronage was controlled by the licensee.

It is contrary, in our view, to common experience to believe that a licensee who exercised such vigilance regarding the identity of those who entered her premises would fail to notice overt behavior of the sort described by the officer.

In any event, the cumulative testimony of the police officer is sufficient, in our view, to support a conclusion that the licensee knew or at least should have known of the disorderly condition of her premises.

There is substantial evidence to support the action of the Authority. The order of the Appellate Division should be affirmed.

Order reversed, with costs in all courts, and matter remitted to Special Term for further proceedings in accordance with the opinion herein.

## NOTES

[\*] They had been described by the officer as wearing hip hugger pants and their shirts tied in the front so as to reveal their bare midriffs.

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## SECTION 5.

### STATE ACTIONS TO REDRESS WRONGS COMMITTED BY THE ABC

- 02 June 2021: NJ State Library  
*New Jersey LGBT Bars 1930s-1960s in ABC Bulletins* by Heather Husted,
- 28 June 2021: NJ Alcohol Beverage Control  
*Formal apology from Director to the LGBT community*
- 29 June 2021: NJ Attorney General Executive Directive No. 2021-8  
*Addressing History of Anti-LGBTQ+ Enforcement Actions by the Division of Alcoholic Beverage Control (ABC)*



## New Jersey LGBT Bars 1930s-1960s in ABC Bulletins

by Heather Husted June 2, 2021

Research in the **ABC Bulletins collection** digitized by the State Library Information Center identified 150 bulletins in which the presence of a queer person was noted. All locations have been added to the map above. This map is considered comprehensive, but corrections and additions are welcome.

Trigger warning: Bulletins linked in this post and on the map may contain homophobia, descriptions of mistreatment, and slurs. These are historical documents and do not reflect current social norms or acceptable language.

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Update: On 29 June 2021, Attorney General Gurbir Grewal vacated the decisions of the Division of Alcoholic Beverage Control (ABC) that resulted in penalties against bar owners serving LGBT patrons in the 1930s-1960s. This map has been updated to note when licensees were included in the Attorney General's directive, and also includes seven locations that were not issued a pardon, locations in which the charges were dismissed, bars accused of lewdness between queer people after 1967, and appeals and court challenges to decisions, for a total of 150 decisions.

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### ABC Bulletins in New Jersey State Library Digital Collections

The State Library Information Center has a large and growing repository of digitized State Documents, preserving and making them available free online for lawmakers, lawyers, State employees, and the general public. Part of our commitment to preserving New Jersey history involves identifying, digitizing, and making available State publications relating to marginalized and disenfranchised populations. These include the **State Asylum reports**, documents and publications on **Black New Jerseyans' history**, documents on **women's suffrage**, and documents on **civil rights**.

The **Bulletins of the Division of Alcoholic Beverage Control (ABC)** are an important primary source for the social history of nightlife, entertainment, law enforcement, crime, and bar culture in New Jersey. Additional background information about the ABC collection can be found in ***Alcoholic Beverage Control Bulletins reveal social history of New Jersey*** by Caitlyn Cook.

Notably, the ABC Bulletins contain significant descriptions of queer culture and LGBTQ people's relationships to the law and each other, in a time in which being one's authentic self in public involved significant personal risk.

How and why did the ABC Bulletins document queer public life?

Post-prohibition legislation led to establishment of the ABC, whose director was empowered by law to create regulations for consumption of alcohol. Then as now, a liquor licensee had requirements to uphold state regulations.

Bar owners who tolerated customers perceived by ABC agents as gender non-conforming broke Rules 4 and 5 of the ABC State Regulations No. 20. Conduct of Licensees and Use of Licensed Premises. ABC Agents who had witnessed people being queer in public provided testimony that described clothing, posture, and timbre of voice to assign charges of “female impersonation” and “male impersonation”, often in combination with other violations, but occasionally the presence of queer people was enough to bring a case and penalties against bar owners.

Rule 4. No licensee shall allow, permit or suffer the licensed premises any prostitute, female impersonator, windler, confidence man, or any notorious criminal, gang banger, racketeer, or other person of ill repute; nor shall any licensee allow, permit or suffer the licensed premises or the license to be used in furtherance or aid of, or in connection with any activity or enterprise resulting in a conviction in a criminal court.

Rule 5. No licensee shall allow, permit or suffer the licensed premises any lewdness, immoral activity, or any obscene language or conduct, or any brawl, act of violence, or disturbance or unnecessary noise; nor shall any licensee  
Number 20, rules 4 and 5. From Rules and regulations, effective July 1, 1950,  
<https://dspace.njstatelib.org/handle/10929/21186>

The regulations were based on ABC’s moral mandate, as expressed in 1955 by Commissioner Davis, “It is clear that homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in the manner hereinbefore related, they are a threat to the safety and morals of the public.” (**Bulletin 1063, Item 1**)

Penalties were strict from the outset. In 1941, Acting Commissioner Garrett sets a precedent minimum charge of 15 days suspension for first offense on rule 5, presence of female impersonators. (**Bulletin 474, Item 1**) Long license suspensions for multiple or recurring violations (sometimes up to 180 days) could drive some bars out of business. Peter Clyment, who operated an unnamed Gloucester City bar in 1942, was compelled to sell his bar license and never operate again, partly for employing two unlicensed entertainers from Philadelphia as “female impersonators.” (**Bulletin 491, Item 2**)

## Being Visibly Queer

The Peter Orsi case in 1939 (**Bulletin 326, item 1**), and the appeal (**Bulletin 390, item 1**) established a “you know one when you see one” precedent cited in subsequent cases, in a case where the only disallowed activity was queer people on the premises.

Bar owners, entertainers, and guests routinely gave testimony arguing they were not queer, only perceived as such in ways that were arbitrary. The Commissioner typically dismissed all such claims if his agents gave detailed testimony describing behavior and appearance outside what he considered normal. As can

be imagined, bar owners and their lawyers tried a variety of ways to defend their businesses, bringing in psychiatrists and even a sociologist as defense witnesses. To support a charge of “obscene conduct by entertainer”, agents provided extended descriptions of verbal interactions, as well as comedy and burlesque performances by “Joe” on multiple dates in November 1951. Joe testified that he was a married man and that his performances were not indecent, and he was not impersonating a female, he impersonated a variety of entertainers, one of whom was Hollywood star Helen Morgan. **(Bulletin 953, Item 1)** At the time of a 1959 raid on Anthony’s in Paterson, bar manager Ruth Murphy Loomis stated she observed no unusual conduct among them and asked, “Tell me one thing: These people who you call homosexuals, gays or whatever you call them – what are they supposed to do?” and that the agent replied, ‘I can’t answer that.’” **(Bulletin 1289, Item 7)**

In 1959, the commissioner wrote that clothes alone were not the determination someone was queer, describing a group at the Rutgers Cocktail Bar as “obviously homosexuals as indicated by their appearance and actions, including their manner of speech, their walk, gestures and other mannerisms.” **(Bulletin 1133, Item 2)** It took the New Jersey Supreme Court case, *One-Eleven Liquors, v. ABC*, (decided November 6, 1967) to remove the prohibition on “well-behaved” queer people using bars. See Whitney Strub and Timothy Stewart-Winter (Nov 30, 2017). **“Remembering One Eleven Wines, a Pre-Stonewall Win Against Homophobic State Surveillance.”** *Slate*.

The Supreme Court case did not exactly end the harassment of queer people in bars. Almost two years later, there was a 14 June 1969 raid on the Gold Nugget in New Brunswick. Three transgender or gender nonconforming women sitting in a bar were arrested and searched but were released and the charges dropped under “recent ruling by the director that the mere presence of female impersonators in a licensed premises, without more, e.g. overt acts of lewdness of their engaging in immoral activity is not violative of Rule 4 of State Regulation No. 20.” **(Bulletin 1933, Item 4)**

## The Silver Lining

Reading in some cases dehumanizing descriptions of queer people in our grandparents’ generation is upsetting. Bulletins are historic documents of the period, and contain what we would today describe as slurs, homophobia and codified disrespect for queer lives.

It is ironic that the detailed testimony used to punish and drive out of business bars where queer people could find each other, also preserves rare descriptions of underground queer culture and personal life. There are detailed and vivid descriptions of fashion; cabaret, comedy, and drag performances; and sometimes funny conversations between queer patrons, bar owners, and ABC agents. Some bulletins preserve inadvertent tributes to romance, joy, and tenderness between queer people. Notable among these are a description of Freddie and Renee dancing together at the Clover Leaf Inn in Hamilton **(Bulletin**

**1159, Item 1**) and descriptions of couples dancing and being physically affectionate at Paterson's NY Bar in 1955. (**Bulletin 1063, Item 1**)

At Anthony's in Paterson in 1959, an agent stated, "a large number of the males wore loud sweaters, loud shirts and multicolored scarves." (**Bulletin 1289, Item 7**) We know in the summer of 1966, butch and gender nonconforming women or transgender people at Jack's Star Bar in Newark wore t shirts and "zipper fly pants", one person wearing a "man's haircut with side burns" and another "a heavy rock and roll hair-do combed back, sweeping back to his [sic] side of the temples." (**Bulletin 1667, Item 3**)

Agents described what sounds like a drag show at the Secaucus Copa Club in March 1956: "the same male musician, now in padded house-dress and wearing a wig, sang an indecent parody of a popular song to a guitar player. Thereafter another performer sang a double entendre song to a couple celebrating their wedding anniversary." (**Bulletin 1112, Item 1**) At Hoover's Tavern, Morris Plains in 1963, a performer named Jim gave a saucy performance, while "two of the apparent homosexuals placed their arms about each other's waist while they were talking, rolled their eyes at each other and made endearing motions." (**Bulletin 1521, Item 1**)

Queer New Jerseyans of the 1930s through the 1960s demonstrated incredible bravery being queer in public when so much could be lost with an arrest. Bar owners risked and sometimes lost their livelihoods by providing space to queer patrons. Being queer and gender nonconforming in public still sometimes presents a risk, but increasingly New Jersey is a safer place to live and thrive.

<https://www.njstatelib.org/New-Jersey-LGBT-Bars-1930s-1960s-in-ABC-Bulletins/>

**1STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE DIVISION OF )  
ALCOHOLIC BEVERAGE CONTROL’S )  
DISCRIMINATORY ENFORCEMENT )  
AGAINST LICENSEES SERVING LGBTQ+ )  
PATRONS FROM 1934 TO 1967 )  
\_\_\_\_\_ )

SR 2021-06  
SPECIAL RULING

BY THE DIRECTOR:

For 33 years, the Division of Alcoholic Beverage Control (“ABC”) blatantly used its rulemaking authority, enforcement powers, and resources to target and punish licensees that allowed LGBTQ+ patrons on their premises. This outright discriminatory treatment did not end until 1967, when the New Jersey Supreme Court ruled that LGBTQ+ individuals had a right to peacefully congregate in licensed establishments, and those establishments had a right to serve them. Undoubtably, discriminatory conduct and attitudes persisted well after 1967, although no longer expressed through formal ABC enforcement actions. The Attorney General has recently issued Executive Directive No. 2021-08 which, among other things, directs the ABC to take action to address this offensive history, and in relevant part to issue this Special Ruling to formally acknowledge and condemn its prior enforcement actions. To be clear – ABC cannot undo the harm caused by this historical wrong. But it can address its past malpractices and commit to higher principles of regulatory conduct beyond those required by law.

**I. Background**

Beginning in 1933, ABC issued approximately 2,500 bulletins, comprised of enforcement actions, agency decisions, rule adoptions, changes in the law, ABC policies, and assorted notices

to licensees and the alcoholic beverage industry. The bulletins have been digitized and made searchable by the New Jersey State Library and are archived on the [library's online database](#). In conjunction with this Special Ruling, the bulletins were reviewed using search terms traditionally associated with LGBTQ+ individuals.<sup>1</sup> Prior to the 1950s, ABC did not use the term “homosexual,” referring instead to “female impersonators” or explicitly slanderous language as quoted below.

**This appalling language is particularly offensive by today's standards, and individuals may find it harmful and triggering to read. It is recited in this Special Ruling solely for the purposes of acknowledging and repudiating ABC's prior wrongful conduct. Please note that in some instances, quoted passages from enforcement actions and judicial rulings have been edited to remove language inappropriate for publication. The original, unedited language remains accessible via the ABC Bulletins published as part of this initiative.**

In 1934, the year after Prohibition was repealed and the Alcoholic Beverage Control Law was enacted, the newly formed New Jersey Department of Alcoholic Beverage Control promulgated rules governing the conduct of liquor licensees.<sup>2</sup> Rule Four provided, “[n]o licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters...prostitutes, female impersonators, or other persons of ill repute.” The rule was prompted in part by the alcoholic beverage industry, which sought to prohibit female impersonators from performing in saloons.<sup>3</sup> The term “female impersonators” was eventually used

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<sup>1</sup> ABC and municipal issuing authorities have concurrent jurisdiction to bring enforcement actions against retail licensees. N.J.S.A. 33:1-31. Thus, municipal issuing authorities may have pursued their own discriminatory enforcement actions against LGBTQ+-friendly licensees that were not documented or memorialized in the ABC bulletins.

<sup>2</sup> ABC Bulletin 48, Item 1 (1934).

<sup>3</sup> “Female Impersonators Are Taboo in Saloons,” *The Herald-News*, July 21, 1934, p. 1; “Impersonators Will Be Barred,” *The Bergen Evening Record*, July 27, 1934, p. 9.

to describe LGBTQ+ individuals as a way of prohibiting their presence at licensed establishments.

ABC's first commissioner, D. Frederick Burnett, described conduct in openly homophobic terms:

The licensee declared emphatically that he did not know that the men who were ousted were perverts [. . .] or, more politely, female impersonators.

However, the defendant's signed statement...and the testimony of the investigators convince me that female impersonators were knowingly permitted in the defendant's tavern and that, in fact, the tavern was a rendezvous for such persons....

There is no excuse for this sort of thing. If a licensee disapproves [. . .] and they refuse to leave on his demand, he may always resort to the simple expedient of calling the police.<sup>4</sup>

Licensees that catered to or welcomed LGBTQ+ patrons faced discriminatory treatment at every turn. For example, in June 1939, ABC suspended the plenary retail consumption license of Peter Orsi for 30 days for allowing "female impersonators" in his tavern in Newark.<sup>5</sup> The suspension led the City of Newark to refuse to renew Mr. Orsi's license.<sup>6</sup> Commissioner Burnett affirmed the city's refusal, concluding that it was "particularly abhorrent" for a licensee to allow such congregation.<sup>7</sup> On appeal to the New Jersey Supreme Court, Justice Charles Wolcott Parker denied certiorari, referring to the licensees' patrons as "perverts."<sup>8</sup>

Beginning in or around 1950, ABC charged licensees with violating Rule Four (i.e., permitting female impersonators) as well as Rule Five, which prohibited licensees from permitting a nuisance on the licensed premises.<sup>9</sup> Enforcement actions by ABC were often based on mere allegations that male patrons conducted themselves in an "effeminate manner."<sup>10</sup> Dubious

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<sup>4</sup> ABC Bulletin 326, Item 1 (1939).

<sup>5</sup> Ibid.

<sup>6</sup> ABC Bulletin 352, Item 2 (1939).

<sup>7</sup> Ibid.

<sup>8</sup> ABC Bulletin 359, Item 13 (1939).

<sup>9</sup> ABC Bulletin 892, Item 2 (1950).

<sup>10</sup> ABC Bulletin 892, Item 2 (1950). In some cases, female patrons were alleged to have conducted themselves in a



evidence and testimony were used to substantiate the charges, for example—“[T]hree homosexuals were on the premises for at least one hour and twenty minutes.”<sup>11</sup> In some cases, patrons were apprehended by police, interrogated, and forced to testify in disciplinary proceedings.<sup>12</sup> Licensees were routinely deprived of a fair hearing by an unbiased decision maker, as demonstrated in the proceeding against licensee One-Thirty-Five Mulberry St. Corp.:

In their testimony the various [ABC] agents recited numerous incidents which occurred on the licensed premises wherein various male patrons gave evidence of abnormal behavior. Many of these incidents involved disgusting and revolting moral degeneration and were accompanied by equally shocking, filthy and obscene language -- much of it in the jargon of sexual perverts....

The revolting situation disclosed by the testimony in this case cannot be permitted to continue. There can be no excuse for permitting this sort of conduct on licensed premises.<sup>13</sup>

From 1934 to 1967, licensees were faced with the choice of ejecting and barring patrons who were known or perceived to be homosexuals or jeopardizing their licenses and livelihoods.<sup>14</sup> As a practical matter, they had no legal recourse: the courts consistently affirmed the ABC's enforcement actions.<sup>15</sup> In 1956, a licensee in Asbury Park, Paddock Bar, was charged with violating Rule Five by permitting “female impersonators and persons who appeared to be homosexuals” on the licensed premises; allowing them to congregate in large numbers; and conducting business “in a manner offensive to common decency and public morals[.]”<sup>16</sup> A hearing

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“mannish” manner. ABC Bulletin 1133, Item 2 (1956); ABC Bulletin 1218, Item 2 (1958).

<sup>11</sup> ABC Bulletin 1356, Item 2 (1960).

<sup>12</sup> ABC Bulletin 892, Item 2 (1951).

<sup>13</sup> Ibid.

<sup>14</sup> ABC Bulletin 1073, Item 4 (1955).

<sup>15</sup> Paddock Bar, Inc. v. Div. of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957); Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App. Div. 1961); Carelis v. Div. of Alcoholic Beverage Control, No. A-582-60 (App. Div. Dec. 21, 1961); C. & S. Tavern Corp. v. Div. of Alcoholic Beverage Control, No. A-611-65 (App. Div. Nov. 29, 1966); ABC Bulletin 1430, Item 1 (1961); ABC Bulletin 1701, Item 1 (1966).

<sup>16</sup> ABC Bulletin 1159, Item 2 (1957).

was held, and the Director acknowledged on the record that no “overt acts of lewdness” or “immoral activity” took place on the premises at any time.<sup>17</sup> Nevertheless, he imposed a 60-day suspension on Paddock Bar, concluding that “the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices.” On appeal to the Appellate Division, the court acknowledged there was no proof of licentious conduct, and the evidence did not even establish with certainty that the patrons were homosexual.<sup>18</sup> Yet the court deemed the evidence sufficient to infer they were homosexual (based on what the court perceived as conspicuous guise, demeanor, carriage, appearance, effeminate pitch) and affirmed the suspension, ruling that “it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud.”<sup>19</sup>

Challenging an ABC enforcement action for permitting apparent homosexuals on the premises was so futile, many licensees pled guilty or non vult (“no contest”) in the hope of a reduced penalty.<sup>20</sup> Other licensees put on an affirmative defense to no avail. In 1954, a licensee in Paterson, N.Y. Bar, was charged with permitting “female impersonators” and “numerous persons who appeared to be homosexuals” on the licensed premises, and a hearing was held.<sup>21</sup>

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<sup>17</sup> Ibid.

<sup>18</sup> Paddock Bar, Inc., 46 N.J. Super. at 408 (App. Div. 1957).

<sup>19</sup> Ibid.

<sup>20</sup> ABC Bulletin 1050, Item 1 (1950); ABC Bulletin 1045, Item 7 (1950); ABC Bulletin 1123, Item 2 (1956); ABC Bulletin 1145, Item 1 (1957); ABC Bulletin 1161, Item 3 (1957); ABC Bulletin 1168, Item 3 (1957).

<sup>21</sup> ABC Bulletin 1063, Item 1 (1955).

Among the licensee's witnesses was a psychiatrist who opined that "homosexuality is not contagious" and "seeing a group of homosexuals would not harm the average" person.<sup>22</sup> Counsel for the licensee argued that "homosexuals are not a menace to society and cannot be [legally] barred from licensed premises."<sup>23</sup> But the Director rejected the defense and substituted his own specious opinion, concluding that "homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in a manner hereinbefore related, they are a threat to the safety and morals of the public."<sup>24</sup>

By the 1960s, public attitudes towards the LGBTQ+ community were evolving, and harassing them for peaceably congregating was becoming less acceptable. In 1965, a licensee in New Brunswick, One Eleven Wines & Liquors, was charged with violating Rule Five by permitting "persons who appeared to be homosexuals, e.g. males impersonating females" to congregate on the premises.<sup>25</sup> Counsel for the licensee argued there was no proof that the patrons were homosexual—and even if they were, the Civil Rights Act (now known as the Law Against Discrimination (LAD)) prevented the licensee from ejecting them in the absence of an actual disturbance.<sup>26</sup> The Director rejected these arguments and imposed a 60-day suspension.<sup>27</sup> The licensee appealed to the Appellate Division, which affirmed the suspension.<sup>28</sup> However, the New Jersey Supreme Court reversed the suspension in 1967, ruling that homosexuals had a right to congregate in licensed establishments as long as their public behavior conformed with currently acceptable standards of decency and morality.<sup>29</sup> The Court rejected ABC's baseless contention

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> ABC Bulletin 1656, Item 5 (1966).

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> ABC Bulletin 1695, Item 1 (1966).

<sup>29</sup> One Eleven Wines & Liquors, Inc. v. Div. of Alcoholic Beverage Control, 50 N.J. 329, 339 (1967).

that the presence of “apparent homosexuals” on a licensed premises was harmful and contrary to the public welfare.<sup>30</sup>

Following the Court’s decision, ABC dismissed all pending charges against licensees for permitting “apparent homosexuals” to congregate on the premises.<sup>31</sup>

## **II. Apology & Directive**

Today, the New Jersey LAD expressly prohibits discrimination based on sexual orientation, gender identity, or expression. But that does not rectify the injustices of the past: from 1934 to 1967, ABC used its statutory mandate to “strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State” as a pretext to oppress a vulnerable minority of the people of this State.<sup>32</sup> With the issuance of Attorney General Executive Directive No. 2021-08, Attorney General Grewal has demanded that we shine a light on this history in an effort to root out and eliminate discrimination. Working with the Attorney General, the ABC issues this Special Ruling and will take steps to strengthen the relationship between ABC and the LGBTQ+ community.

On behalf of ABC, I apologize to licensees and the LGBTQ+ community for the pain and harm caused by ABC’s homophobic and transphobic conduct and rhetoric. I condemn these actions. I also pledge on behalf of this agency and its staff that ABC will accord respect, dignity, fairness and appropriate due process to all parties and persons before it and will not discriminate—or by extension allow licensees or permittees to discriminate—against protected classes or the public. In addition, I acknowledge and affirm the mandates set forth in the AG Executive Directive No. 2021-08:

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<sup>30</sup> Id. at 340-41.

<sup>31</sup> ABC Bulletin 1804, Item 6-7 (1968); ABC Bulletin 1805, Item 7 (1968).

<sup>32</sup> N.J.S.A. 33:1-3.1(b)(1).

- **Vacation of charges premised on violations of Rules Four and Five.** Through this Special Ruling, and consistent with the Supreme Court’s decision in One Eleven Wines & Liquors, Inc., I am vacating all disciplinary charges against licensees from 1934 to 1967 alleging violations of Rules Four and Five for allowing “female impersonators” and “apparent homosexuals” to congregate on their licensed premises.
- **Publication of ABC historical records.** ABC is making available its historical records on its website, which is accessible [here](#). The full records can also be accessed through the following link: [ABC Bulletins related to LGBTQ+ \(1934 to 1967\)](#).
- **Strengthening relationship between ABC and the LGBTQ+ community.** In order to reinforce ABC’s commitment to higher principles of regulatory conduct, and consistent with training provided to other Divisions within the Department of Law & Public Safety, I am directing all ABC investigators and deputy attorneys general to receive anti-bias training, and attend cultural diversity training offered through the Attorney General’s Community Law Enforcement Affirmative Relations (CLEAR) Continuing Education Institute. ABC will also work with the alcoholic beverage industry, including the Licensed Beverage Association, the New Jersey Restaurant and Hospitality Association, and other stakeholder groups to promote this message of inclusivity and the importance of cultural diversity awareness and training.
- **Identification of other potential discriminatory actions.** ABC will undertake a further historical review of its bulletins and past actions to determine if its

enforcement authority was ever used in a discriminatory manner against other protected classes or the public. Our findings will be made public and corrective action will be taken as appropriate. In accordance with the Attorney General's directive, this review shall be completed for a report back to the Attorney General no later than October 15, 2021.



JAMES B. GRAZIANO  
DIRECTOR

Dated: June 29, 2021  
APW/RL



## *State of New Jersey*

PHILIP D. MURPHY  
*Governor*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
PO Box 080  
TRENTON, NJ 08625-0080

GURBIR S. GREWAL  
*Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

### **ATTORNEY GENERAL ADMINISTRATIVE EXECUTIVE DIRECTIVE NO. 2021-8**

**TO:** Director, Division of Alcoholic Beverage Control

**FROM:** Gurbir S. Grewal, Attorney General

**DATE:** June 29, 2021

**SUBJECT:** **Directive Addressing History of Anti-LGBTQ+ Enforcement Actions by the Division of Alcoholic Beverage Control (ABC)**

On a Wednesday evening in April 1965, three men working as undercover agents for the Division of Alcoholic Beverage Control (ABC) seated themselves inside Manny's Den in New Brunswick and spent the next ninety minutes observing the patrons. The agents noted that all eleven of the customers were male, and that the majority of them were "very effeminate." According to the agents, the patrons conversed in a "lisping tone," took "short sips from their straws," and when walking "swished and swayed." *In re One Eleven Wines & Liquors, Inc.*, ABC Bulletin 1656, Item 5 (Dec. 27, 1965).

The agents returned three more times over the next 10 days and made similar observations. Based on this investigation, ABC concluded that Manny's Den had allowed "apparent homosexuals" to congregate inside its premises and therefore should lose its liquor license for 60 days—a sanction that ABC Director Joseph P. Lordi later described as the "usual penalty" for permitting such gatherings. *Id.* at 11. At the time, the case law from New Jersey's lower courts was crystal clear: ABC was in the right. The "congregation of apparent homosexuals" constituted a violation of Rule 5 of ABC State Regulation No. 20, which prohibited licensees from conducting their business in "such manner as to become a nuisance."

E. Manning Mack, the owner of Manny's Den, challenged ABC's penalty despite the many failed challenges that had come before. After his request to dismiss the violation was rejected by the ABC Director and the Appellate Division, Mack took the matter to the New Jersey Supreme Court. In September 1967, the Court issued a landmark decision, ruling unanimously that ABC could not invoke Rule 5 to shut down bars simply because their clientele was gay. In an opinion that was significant for its era—though still painful to read today—the



Court concluded that “though in our culture homosexuals are indeed unfortunates, their status does not make them criminals or outlaws.” *One Eleven Wines & Liquors, Inc. v. Div’n of Alcoholic Beverage Control*, 50 N.J. 329, 339 (1967). “So long as their public behavior violates no legal proscriptions,” the Court continued, “they have the undoubted right to congregate in public.”

\* \* \*

Gay bars have long played an important role for LGBTQ+ individuals. At a time when homophobia and transphobia were deeply rooted in mainstream American culture, these establishments provided community for people who had nowhere else to gather. The opportunity they provided for sexual minorities to see that they were not alone—and to discuss shared experiences of discrimination—meant gay bars were crucial to the birth of the modern gay rights movement. But the same things that made these bars essential to the LGBTQ+ community made them targets for the forces of intolerance. For decades, government agencies across the country used their powers to close bars and harass their patrons. And, as we now acknowledge, that effort included the New Jersey Attorney General’s Office, of which the Division of Alcoholic Beverage Control (ABC) has been a part since 1948.

ABC played a leading role in New Jersey’s decades-long suppression of gay bars. The primary tools in its arsenal were a pair of regulations adopted in 1934, shortly after ABC was established as an independent state agency in the wake of Prohibition. The first was Rule 4, which prohibited licensees from allowing on their premises “any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other person of ill repute.” The second was Rule 5, which among other things prohibited a place of business from being conducted “in such manner as to become a nuisance,” and was later amended to expressly prohibit “lewdness and immoral activities” and “foul, filthy, indecent, or obscene language or conduct.” *One Eleven Wines & Liquors, Inc.*, 50 N.J. at 331.

In the early years of ABC, most enforcement actions against gay bars were based on Rule 4’s prohibition against “female impersonators.” These actions continued after the agency was placed under the authority of the Attorney General in 1948. A review of the historical record suggests that ABC used the term as a catchall description of LGBTQ+ individuals, even when describing cisgender gay men. In one case, the ABC Director justified a Rule 4 violation on the grounds that the mere “presence of female impersonators in and upon licensed premises presents a definite social problem,” noting the “deep-rooted personal contempt felt by a normal red-blooded man.” The “mere thought of such perverts is repugnant to the normal person,” the Director continued. *In re M. Potter, Inc.*, ABC Bulletin 474, Item 1 (Aug. 7, 1941).

Starting around 1950, ABC shifted its approach, bringing enforcement actions against gay bars under Rule 5 as well as Rule 4. In many cases, the actions were not premised on specific allegations of improper conduct, but rather on the theory that the gathering of “apparent homosexuals” had allowed their establishments to operate in “such a manner as to become a

nuisance.” *In re Polka Club, Inc.*, ABC Bulletin 1045, Item 6 (Dec. 27, 1945). ABC’s crackdowns continued on this theory until *One Eleven Wines & Liquor* precluded them.

ABC and the Office of the Attorney General have been unable to determine exactly how many gay bars were shuttered by ABC. Nonetheless, the agency’s archives provide some insight into the scope of ABC’s actions. Since its establishment, the agency has documented its most significant activities—including enforcement actions resulting in a license revocation or lengthy suspension—in records known as “ABC Bulletins.” Our review of these bulletins between 1933 and 1967 revealed a total of 126 actions against 104 licensees relating to LGBTQ+ activity and resulting in sanctions under Rule 4 or Rule 5. Ten of these establishments lost their licenses permanently; the rest were suspended for periods ranging from 5 to 240 days.<sup>1</sup> Other enforcement actions that were settled quietly and not documented in the Bulletins likely resulted in lesser penalties for similar conduct. And, undoubtedly, some licensees chose to refuse service to LGBTQ+ individuals altogether as a way of avoiding sanction.

There is no way of determining how much the five Attorneys General who oversaw ABC prior to 1967 knew about the agency’s harassment of LGBTQ+ New Jerseyans. But there is reason to think that they knew what was going on.<sup>2</sup> From the time that ABC was placed in the Department of Law & Public Safety in 1948, the ABC Director has reported directly to the Attorney General, and the Department’s longstanding practice is for Division Directors to update the Attorney General regularly on significant enforcement matters. In addition, even before E. Manning Mack took his case to the New Jersey Supreme Court, at least three gay bars sanctioned under Rules 4 and 5 brought legal challenges against ABC resulting in decisions by the Appellate Division. *Murphy’s Tavern v. Davis*, 70 N.J. Super. 87 (App. Div. 1961); *Efcharis Carelis v. Div’n of Alcoholic Beverage Control*, ABC Bulletin 1430, Item 1 (Jan. 19, 1962); *Paddock Bar, Inc. v. Alcoholic Beverage Control Div’n*, 46 N.J. Super. 405 (App. Div. 1957). As was standard practice, Deputy Attorneys General in the Division of Law defended ABC in these challenges, and in all three instances the court affirmed ABC’s actions.

Our Department has never reckoned with this ugly moment in its history. That ends with today’s directive. We acknowledge the pain caused by ABC’s past actions. We recognize that our office, charged with furthering justice, set back the cause of freedom and equality in New Jersey. And we commit to repairing the damage.

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<sup>1</sup> A number of the bars sanctioned for allowing “female impersonators” or the congregation of “apparent homosexuals” were also cited for violating other ABC rules, which contributed to the significant variation in penalties. In addition, ABC adopted a system of graduated discipline, and establishments with a prior record of violations were more likely to receive more significant sanctions following subsequent violations.

<sup>2</sup> In addition, at least one Governor had direct knowledge of ABC’s policies: Alfred Driscoll, who served as the State Commissioner of Alcoholic Beverages from 1941 to 1947 and on at least one occasion revoked a liquor license from a bar for, among other things, allowing a “female impersonator” on the premises. *In re Sidney Litchenstein*, ABC Bulletin 571, Item 1 (June 4, 1943).

While the homophobic and transphobic policies instituted by ABC—and defended by others in our Department—may have been consistent with cultural standards at the time, this type of anti-gay activity was facing growing scrutiny by the middle of the twentieth century. *See, e.g., Vallerga v. Dept. of Alcoholic Beverage Control*, 53 Cal.2d 313 (1959); *People on Complaint of Fasone v. Arenella*, 139 N.Y.S.2d 186 (N.Y.C. Mag. Ct 1954). We cannot simply ignore this history and move on. For that reason, I recently spoke with the leadership of Garden State Equality, New Jersey’s largest statewide LGBTQ+ organization, to offer my sincere apology for the harm caused by these actions. And later today, on June 29, 2021, I will be joining Garden State Equality and local leaders in Asbury Park to install a memorial at the former site of Paddock Bar, which was subject to three separate enforcement actions between 1957 and 1960. *See* ABC Bulletin 1368, Item 5 (Nov. 3, 1960); ABC Bulletin 1202, Item 5 (Nov. 21, 1957); ABC Bulletin 1159, Item 2 (Apr. 3, 1957).

In addition, with the support of and in consultation with ABC Director James Graziano, I am ordering and directing the following actions:

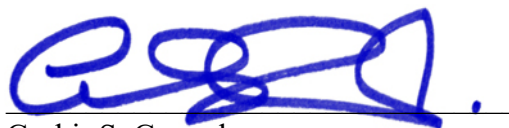
- A. ***Issuance of ABC Special Ruling vacating pre-1967 enforcement actions.*** Concurrent with the issuance of this Directive, the Director of ABC shall issue a Special Ruling that formally vacates all enforcement actions issued prior to 1967 premised on the Rule 4 prohibition against “female impersonators” and the Rule 5 prohibition against conducting a business as a “nuisance” when applied to the congregation of “apparent homosexuals.” The Special Ruling applies to, at a minimum, the 126 actions identified in ABC Bulletins and listed in the appendix to this Directive.
- B. ***Publication of ABC’s historical records.*** ABC shall post on its public website the full archive of ABC Bulletins that describe the 126 enforcement actions subject to today’s Special Ruling. This archive will ensure that the historical record is available to those who wish to better understand how an otherwise esteemed government agency can be led astray by discriminatory policies.
- C. ***Strengthening the relationship between ABC and the LGBTQ+ community.*** The relationship between ABC and the LGBTQ+ community has evolved considerably since the time of *One Eleven Wines & Liquors*, and I am heartened by how Director Graziano and his leadership team have embraced this opportunity to deepen its engagement with LGBTQ+ New Jerseyans. Going forward, and consistent with training provided to other Divisions within the Department of Law & Public Safety, ABC shall participate in the cultural diversity training offered by the Attorney General’s Office through the Community Law Enforcement Affirmative Relations (CLEAR) Continuing Education Institute. In addition, ABC shall undertake anti-bias training for its investigators and attorneys—not simply to ensure that the agency treats all New Jersey residents with dignity and respect, but also to ensure that the implicit biases we all carry do not inadvertently affect ABC’s enforcement work. To the extent appropriate, ABC shall partner with stakeholder groups such as the New Jersey Licensed Beverage Association

and New Jersey Restaurant and Hospitality Association to carry out this mission of inclusivity and cultural diversity awareness.

- D. ***Identification of other potential actions against marginalized communities.*** The discriminatory use of ABC's enforcement authority against the LGBTQ+ community raises questions about whether these powers were used to target other marginalized communities in New Jersey. To that end, ABC shall review its Bulletins and other historical documents determine whether its enforcement authority was used in a discriminatory manner in other instances and report back to the Attorney General on recommended actions no later than October 15, 2021.

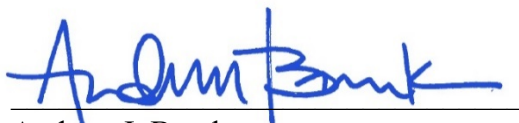
## II. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to supervise operations of the Department of Law and Public Safety. Nothing in this Directive or ABC Special Ruling 2021-06 shall be construed in any way to create any substantive right or remedy that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the First Assistant Attorney General, or the First Assistant's designee.
- D. ***Effective date.*** This Directive shall take effect immediately and remain in effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal  
Attorney General

ATTEST:



Andrew J. Bruck  
First Assistant Attorney General

Dated: June 29, 2021

**AG Directive 2021-8**  
**Appendix**

**ABC Licensees Subject to Anti-LGBTQ+ Enforcement Actions (1933-1967)**

<b>Town</b>	<b>Bar Name</b>	<b>Penalty (in days)</b>	<b>Date</b>	<b>ABC Bulletin (Item No. in Parens)</b>
Absecon	Torch's Lodge Bar	110	12/06/56	1150 (1)
		202	12/02/58	1258 (4)
Asbury Park	Blue Note	55	04/12/64	1674 (7)
	Chez'l Cocktail Lounge	65	01/11/67	1721 (1)
	Paddock Bar	60	04/03/57	1159 (2)
		115	11/21/57	1202 (5)
		180	11/03/60	1368 (5)
Atlantic City	1025 Bar and Grille	70	03/03/60	1333 (7)
	Brass Rail Bar	55	10/01/63	1536 (3)
	Club New Orleans	60	08/07/67	1756 (8)
	Eddie's Shamrock Café	105	10/17/66	1705 (3)
	Entertainer's Club	190	11/02/55	1088 (2)
		240	05/01/63	1515 (1)
	Famous Bar	30	05/25/60	1345 (6)
	Hialeah Club	60	11/17/66	1712 (3)
	Jockey Club	176	12/29/58	1259 (5)
		75	11/19/62	1488 (1)
	King Bar & Liquor Store	150	01/22/62	1437 (3)
	Midtown Bar & Café	60	10/24/60	1366 (6)
	New Torch Club	100	10/31/56	1145 (1)
	Pappy's Bar	55	09/18/61	1418 (1)
	Shore Tavern	70	10/06/64	1589 (4)
	The Jet Set Bar & Lounge	145	11/29/67	1763 (2)
	Topsy's Hideaway	176	12/29/58	1259 (4)
	Val's Bar	55	09/29/64	1588 (3)
		120	07/27/66	1685 (1)
		180	08/24/67	1747 (2)
Caldwell	Kit-Kat Tavern	Revoked	04/18/41	456 (3)

Camden	Cambar	40	04/29/65	1620 (7)
	Mindy's	100	11/17/60	1371 (5)
		215	10/09/63	1538 (1)
	Your Girls	180	11/30/66	1713 (2)
Carlstadt	Club Harmony	126	02/17/48	794 (10)
Cliffside Park	Pepper Box Bar	60	10/29/62	1486 (3)
Dunellen	License of J. & A. Tumulty	75	08/16/62	1466 (1)
Egg Harbor City	Snug Harbor Inn	Revoked	03/07/57	1161 (3)
Elizabeth	Billy's Tavern	190	09/11/61	1417 (1)
	Blue Room	85	06/22/61	1403 (3)
	Pop's Tavern	Revoked	06/08/67	1746 (1)
	Silhouette Lounge	55	01/08/63	1495 (7)
	Woody's Tap Room	80	07/12/66	1691 (1)
	License of Jessie Lloyd	120	12/27/54	1045 (7)
		43	05/14/56	1118 (2)
Fairview	License of Walter Sherry	65	06/16/58	1236 (3)
	Ally-Ally	210	10/13/67	1757 (1)
Franklin Twp.	Talk of the Town	75	03/18/65	1614 (3)
Gloucester City	Andy's New Log Cabin	85	01/08/63	1496 (3)
	Marcella Bar	Unknown	03/29/66	1673 (2)
Hoboken	Rogers	55	08/01/59	1299 (4)
	License of Margaret Garaventi	Revoked	01/06/53	953 (1)
	License of Frances Lachnicht	75	01/15/62	1436 (3)
Lodi	Fun House	35	03/06/52	929 (3)
Long Branch	Martinitz Tavern	65	03/15/66	1671 (6)
Mays Landing	Clover Leaf Inn	60	04/03/57	1159 (1)
Merchantville	First Circle Inn	70	08/14/61	1413 (2)
Millstone Twp.	Tollins Bar	20	02/19/62	1441 (5)
Montville	Marge's Keyhole Lounge	30	07/10/61	1406 (2)
New Brunswick	Manny's Den	60	01/26/66	1656 (5)
	Rutgers Cocktail Bar	60	09/11/56	1133 (2)

Newark	Club Coronet	180	06/25/56	1123 (2)
	Club Deline	40	01/09/63	1495 (6)
	Club Tequila	180	03/05/64	1557 (1)
		Revoked	06/01/64	1570 (1)
	Four Corners Bar	95	08/06/62	1475 (3)
	Hub Bar	95	10/25/61	1423 (5)
	Hy and Sols Bar	40	08/25/60	1356 (2)
	Jack's Star Bar	80	02/28/66	1667 (3)
	Latin Quarter	45	02/23/62	1444 (3)
		110	07/16/62	1471 (2)
	Log Cabin Inn	Revoked	11/05/38	279 (8)
	Murphy's Tavern	60	12/27/60	1374 (2)
		55	04/14/64	1563 (4)
		Revoked	06/06/66	1677 (1)
	O.K. Corral	55	04/07/64	1562 (1)
	Pelican Bar	70	08/11/58	1242 (3)
	Polka Club	178	12/27/54	1045 (6)
	Skippy's Hideaway	70	07/27/64	1580 (5)
	Skip's Bar	180	04/20/61	1392 (1)
	Sol's Tavern	100	09/21/64	1587 (1)
	License of 135 Mulberry St.	Revoked	12/21/50	892 (2)
	License of Anna Siegel	55	07/09/59	1293 (3)
		210	12/20/62	1493 (1)
	License of Bunny Hutch Co.	125	01/19/67	1722 (2)
	License of Peter Orsi	30	06/22/39	326 (1)
	License of M. Potter, Inc.	10	08/07/41	474 (1)
North Brunswick	Triangle Inn	35	02/02/66	1662 (8)
Old Bridge	License of Stepko, Inc.	5	01/20/64	1550 (14)
Orange	Redman's Club Café	70	07/28/60	1354 (2)
Parsippany	Hoover's Tavern	55	07/23/62	1474 (2)



Paterson	All Fair Tavern	115	11/25/64	1546 (2)
	Anthony's	60	06/15/59	1289 (7)
	Bader's Bar	180	06/21/55	1073 (4)
		200	07/15/57	1184 (1)
	Club Ali-Baba	15	01/21/65	1602 (9)
		55	06/20/67	1749 (4)
	Doc's Tavern	65	04/09/57	1168 (3)
		30	01/06/64	1548 (4)
	Edna's Rendevous	142	02/02/59	1267 (3)
		150	01/16/61	1378 (3)
	Garden State Club	180	12/28/56	1153 (1)
	Herbie's Bar & Grill	20	10/18/55	1087 (7)
	Hollywood Café	55	04/25/61	1393 (2)
	Little Club	20	07/16/57	1185 (1)
	New York Bar	180	04/21/55	1063 (1)
		Revoked	07/18/56	1126 (3)
	The Casino	180	01/24/55	1050 (1)
		240	06/14/57	1177 (8)
		151	04/20/60	1340 (5)
		50	07/06/62	1456 (3)
	License of Charmac, Inc.	55	06/17/65	1630 (2)
		115	08/11/65	1637 (1)
	License of Sidney Litchenstein	Revoked	06/01/43	571 (1)
Pennsauken	Ron-Day-Voo	50	07/29/65	1625 (2)
	Uncle Milt's	90	02/06/63	1501 (5)
Perth Amboy	License of P.A. Colored Democratic Club	25	08/19/49	852 (7)
Phillipsburg	Wardell Hotel	60	09/25/63	1529 (2)
Rochelle Park	License of Connie Gannitti	55	03/03/58	1218 (2)
Roselle	Helene's	40	06/29/61	1405 (3)
Secaucus	Copa Club	40	04/06/56	1112 (1)

Trenton	Hotel Penn	60	04/30/62	1453 (2)
	Paddock Inn	65	05/05/60	1342 (1)
		60	01/06/64	1543 (3)
	Shell's Bar & Restaurant	65	09/18/58	1247 (2)
	Storky's Inc.	Revoked	01/12/59	1263 (2)
Waterford	Speedway Inn	60	07/28/58	1241 (3)
West New York	Monroe Tavern	55	03/04/64	1557 (3)

OUTWARD

## Remembering *One Eleven Wines*, a Pre-Stonewall Win Against Homophobic State Surveillance

BY WHITNEY STRUB AND TIMOTHY STEWART-WINTER

NOV 30, 2017 • 1:27 PM



Murphy's Tavern and surrounding Mulberry Street, 1961.

Courtesy of the Newark Public Library

Fifty years ago this month, the Supreme Court of New Jersey recognized for the first time the right of “well behaved apparent homosexuals” to congregate in bars. This landmark but little-known decision, *One Eleven Wines & Liquors, Inc., v. Division of Alcoholic Beverage Control*, is worth revisiting on its semi-centennial for several reasons.

First, it reminds us that the iconic 1969 Stonewall rebellion was preceded by many smaller, incremental victories for LGBTQ people. Second, the key role of Murphy's Tavern in downtown Newark helps recast our memory of urban history. Newark in the year 1967 is mostly recalled for the explosive violence between African American residents and white National Guardsmen that July, but the city also has a rich, multiracial queer history. (The state's high court consolidated the Murphy's lawsuit with two other pending cases by the owners of One Eleven Wines in New Brunswick and Val's Bar in Atlantic City, generating the case name.) Finally, this anniversary reminds us of the sheer perversity of a legal regime in which undercover agents of the state tried to "decode" homosexuality by means that read as laughably clumsy to us now, but were quite harmful at the time.

As in most states, the liquor regulatory agency that emerged in the 1930s after the repeal of Prohibition became a crucial means for state suppression of LGBTQ New Jerseyans. Scrounging in the records of the New Jersey Alcoholic Beverage Control commission (known as "ABC"), one encounters reductive language and ideas about gay people that seem silly today. If a government spy saw a bartender serving drinks to a man who "wiggled his hips as he walked" while "bouncing on his toes," or two men who "had eyebrow pencil on," the agency used this information to harass the bar's owners or even shut it down. Such tactics were part of an oppressive regime that needed ways of discerning homosexuals in the wild in order to excise them from the dominant straight world.

In *One Eleven Wines*, the New Jersey Supreme Court ultimately ruled that although perhaps in the 1930s it had been unclear whether effective "control" of bars and clubs necessarily entailed keeping out gay men and lesbians, society had matured since then. "Now, in the 1960s," the justices wrote, the assumption that the state must kick gay people out of bars "is long past," having yielded instead to what it called "current understandings and concepts." The court ordered the ABC to "deal effectively with the matter through lesser regulations which do not impair the rights of well-behaved apparent homosexuals to patronize and meet in licensed premises."

This historic ruling emerged out of a struggle, under the surface of the post-World War II Ozzie-and-Harriet era, when America's gay establishments were constantly under surveillance by employees of the state dressed up as patrons. Because what historian Margot Canaday calls the "straight state" depended on note-taking by these faux customers, we have a remarkable record of gay nightlife in cities including Newark.

## **Straight Spies in Gay Newark**

Murphy's was already a thriving queer scene by the time the ABC launched an "extensive investigation" between May and July of 1950. Undercover agents posing as patrons took

notes on the regulars, reporting back that they “were openly conducting themselves in a most peculiar and effeminate manner.” According to these spies, homosexuals in 1950 were men who “talked and laughed in high pitched voice; walked in a manner most effeminate (sometimes on tip-toes, sometimes with a ‘wiggle’).” Their conversation around the bar occurred “in the jargon of sexual perverts,” the men addressed one another in feminine nicknames, and “one even used mascara and powder.” They joked about sexual assignations and about male pregnancy. In fact, “patrons were seen to use their hands freely on each other,” with some even going “so far as to fondle the buttocks and privates of other males.” For allowing all this, Murphy’s Tavern had its liquor license temporarily revoked.

Murphy’s location in the heart of downtown Newark, almost around the corner from ABC headquarters, may have put it under special scrutiny. The bartenders at Murphy’s claimed ignorance of the purported perversion in their midst, but the Newark police had warned them three times that summer about the homosexual presence, so their feigned ignorance fell flat. Murphy’s Tavern was clearly, unambiguously serving a thriving scene of gay men.

A decade later in 1961, ABC agents were still spying on gay men in another Newark bar, the Hub, just down the block from Murphy’s. This time, they had to grasp a bit more to articulate the essence of homosexuality, reporting, “males appeared to be homosexuals, as evidenced by their high-pitched voices, their effeminate walk, attire, and mannerisms, which sexual deviation they further displayed by addressing each other as ‘honey,’ ‘sweetie,’ and ‘baby.’” While these agents documented none of the expressions of physical desire and affection from the earlier report, they did write up the presence of Francie, “a ‘male’ known as the Belle of Mulberry Street,” who invited unspecified “perverted acts.” For that, the Hub’s license was suspended for 95 days.

Queeny gay men weren’t the only deviates the ABC was worried about. At the Latin Quarter, a bar just south of downtown, ABC agents noted the presence of women who “wore dungarees and male-type shirts and had no facial make-up,” and occasionally “placed their arms around each other’s waist or shoulder.” Again, inspectors tried to prove their case by showing bartender awareness of serving lesbians. As if anticipating Supreme Court Justice Potter Stewart’s famous inability to define pornography, and as if to call into question the state agents’ own predilections, a server named Louis Anderson quipped back, “Do you know one when you see it?” Yet, the ABC believed it did, and the Latin Quarter’s license was suspended for 45 days in February 1962.

## What Makes a Bar Gay?

This same spree of surveillance at the turn of the 1960s—which coincided with antigay crackdowns in other U.S. cities, including New York and Chicago—eventually led to the 1967

victory in *One Eleven Wines*. The ABC had again suspended Murphy's license for sixty days after more surveillance. In June 1961, the tavern challenged the order in a New Jersey court.

The ABC had two separate charges in the case: first, that Murphy's had "allowed, permitted and suffered thereon persons, males impersonating females, who appeared to be homosexuals," which in and of itself constituted a public nuisance; and second, that some of these homosexuals had engaged in "foul, filthy and obscene conduct" while making arrangements for "acts of perverted sexual relations." Murphy's countered that the inspectors had merely demonstrated that "persons with effeminate characteristics may have frequented the premises." The stage was set for an interpretive showdown: How does the state identify a homosexual?

Yet again, ABC agents offered a litany of unmasculine behavior and demeanor: "feminine actions and mannerisms," eye-rolling and simulated kisses, and, as unnamed Investigator R. insisted, "We could definitely smell the odor of perfume on the premises." Ever subtle, a somewhat shaken agent R., after witnessing some grabbing of buttocks and private parts in the line to restroom, sighed to a bartender, "The kids must have really been dressed up for Halloween." After a group of apparent homosexuals kissed the bartender on the cheek and grabbed at his genital area on their way out the door, R., accompanied by fellow agent S., confronted him, asking if that behavior was normal. The bartender shrugged, "That's nothing ... you could see that in any straight bar too." Taking their commitment to hetero norms one step further, the agents asked if he would kiss them, too. "Sure, if you were my cousin," he responded.

Out of this awkward encounter, legal history was made. Murphy's presented witnesses in its defense, such as local man William R. Peters, a regular patron who testified that while some of the customers "have fairly high voices," he remained unperturbed by them and "did not perceive any homosexuals." A bartender "conceded that some of the patrons had feminine characteristics but denied that any of them, to his knowledge, were homosexuals," explaining their "possible touching" through the crowdedness of the bar. He denied knowing what "fag" or "fairy" meant. They even brought in an athletic director from the Newark Athletic Club, who told the court it was "not possible to tell from a person's mannerisms whether he is a homosexual."

But in the end, none of it mattered. While the court assured that it was not "callous to the problem of the homosexual," it found abundant evidence that "an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech, and gestures commonly associated with homosexuals." And since its primary concern was

“maintenance of accepted standards of public decency and morality,” the ABC prevailed—for a time.

## Toward a Queer Legal Milestone

In the end, however, Murphy’s Tavern fought back, and won. The bar continued in business while appealing its case, which sat in the legal system until being combined with similar cases from New Brunswick and Atlantic City. In this next round, the key issue had to do with the meaning of the word “apparent.” An ABC spokesman explained that the agency employed this term “because they behave as homosexuals and act as homosexuals. But it is not because they are homosexuals (that the licenses were suspended). If they were just sitting there, there would be no disciplinary procedures.” He emphasized that “in every case there was activity — males dancing together, kissing, embracing. These are overt acts.” The ABC had lewdness and immorality charges at its disposal, but the legal question had shifted to the more general nuisance category; the convoluted effort to construct the “apparent homosexuals,” a group defined through both action and affect, attempted to blur that legal distinction.

When the New Jersey Supreme Court finally issued a decision in Nov. 1967, it was a stinging rebuke to the ABC. The pioneering homophile group the Mattachine Society had filed a brief in support of the bars, and Dr. Wardell Pomeroy from the Kinsey Institute also testified, but ultimately the decision was a referendum on ABC tactics. Regarding the state’s claim that “the presence of apparent homosexuals in so-called ‘gay’ bars may serve to harm the occasional non-homosexual patrons who happen to stray there,” the court simply scoffed. The ABC also argued that “offensive conduct” by gay patrons might lead to violence against them, and even asserted the need to “increase public respect and confidence in the liquor industry” through its policing, but to no avail. While insistently repeating the phrase “apparent homosexuals” in its opinion, the court even jabbed at the misapprehensions of the ABC investigators, noting that they repeatedly conflated these figures with female impersonators, “although that term relates more properly to transvestites who are, for the most part said to be non-homosexuals.” In other words, the court did not accept that the ABC spies could tell, just by looking and listening, whether a bar patron was gay. Not only couldn’t the state get its apparent homosexuals straight, perhaps some of them were in fact straight!

The *One Eleven* case was a major breakthrough in New Jersey, even though the court hinted that, had the ABC been cleverer in pursuing specific lewdness or immorality charges against Murphy’s rather than the more general nuisance, it might have won. The head of the Newark police department, Dominick Spina, bemoaned the decision, suggesting that only



police repression had “saved” Newark from devolving into a “Greenwich Village or hippie land.”

Thus, a key right—to gather unmolested by the state—was won for the gay people of Newark, and New Jersey, even though the court left open the possibility of moving backward in the future, should “apparent” homosexuality slide too far into actual physical contact in a bar. This was not the explosive eruption of the Stonewall rebellion, which signaled a more militant phase in the history of LGBTQ activism. Instead, this was a hard-won toehold, a tenuous gain, waged by bar owners, and an insecure new right—which is, indeed, primarily how queer freedoms have expanded both before and after Stonewall.

Murphy’s itself, it’s important to note, was not always a utopia for LGBTQ people. Interviews by the Queer Newark Oral History Project at Rutgers University-Newark reveal that its patrons in the 1950s were mostly white, but grew increasingly multiracial by the 1970s, when Newark had become a majority-black city. Yet Murphy’s still sometimes clung to its own exclusionary vision of apparent homosexuality. Miss Pucci Revlon, a Newark transgender pioneer, recently recalled being turned away at the door of Murphy’s, she believed because the proprietors didn’t want trans folks inside—although in time, the bar grew more hospitable. For decades, it served a central role in local LGBTQ communities; as Puerto Rican lesbian Yvonne Hernandez puts it, “I felt safe there.” As late as 2003, *Out* magazine called it a “laid-back neighborhood gay pub.”

For many decades, Murphy's was a haven for LGBTQ people in the heart of Newark. Like so many historic LGBTQ establishments across the country that survived decades of police harassment, ultimately the place was demolished by developers, to make way for the Prudential Center sports arena that opened in 2007. Today, the block where it once stood is a barren slab of concrete. Instead of any historical marker to the landmark of gay history, like the Stonewall Inn just across the Hudson river, it is graced instead with a gigantic statue of a hockey player. Not all physical sites of LGBTQ history can be National Monuments, of course; but as the landscapes of our cities change, it's worth remembering the many dives, cafeterias, and other unlikely spaces where the gradual, hard-won early steps towards equality took place.

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## SLATEGROUP

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Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
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August 3, 1961

BULLETIN 1395

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-244-60

MURPHY'S TAVERN, INC.,

Appellant,

vs.

WILLIAM HOWE DAVIS, Director  
of the Division of Alcoholic  
Beverage Control,

Respondent.

Argued June 6, 1961 -- Decided June 26, 1961.

Before Judges Conford, Freund and Kilkenny

Mr. George R. Sommer argued the cause for  
appellant (Mr. Morris Barr, of counsel).

Mr. Samuel B. Helfand, Deputy Attorney General,  
argued the cause for respondent (Mr. David D.  
Furman, Attorney General, attorney; Mr. Helfand,  
of counsel).

The opinion of the court was delivered by

FREUND, J.A.D.

Murphy's Tavern, Inc. appeals from an order of the Director of the Division of Alcoholic Beverage Control suspending its retail consumption license for a period of 60 days on the grounds of violation of Rule 5 of State Regulation No. 20, providing that:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

Appellant, whose establishment is located on Mulberry Street in Newark, was charged in two separate proceedings. The first charge alleged that on October 24, 30 and November 8, 1959, the defendant permitted its licensed premises to become a nuisance in that it "allowed, permitted and suffered thereon persons, males impersonating females, who appeared to be homosexuals," and "allowed, permitted and suffered such persons to frequent and congregate in and upon" the licensed premises, and otherwise conducted the licensed place of business "in a manner offensive to common decency and public morals." The second set of charges was directed towards activities on May 6, 13 and 14, 1960, and asserted that defendant had permitted male persons on the licensed premises "to engage and participate in foul, filthy and obscene conduct and to solicit and make overtures for and arrangements with other male persons \* \* \* for acts of perverted sexual relations;" the substance of the initial charge was also repeated in order to cover the dates in May, 1960.

The hearing officer concluded that the Division had established appellant's guilt as to all charges by a fair preponderance of the evidence. The Director concurred in and adopted the findings and conclusions of the hearer. This appeal is predicated solely on the contention that the proofs adduced in the two proceedings do not justify the inference of violation of the Regulation as set forth in the charges. It is claimed that all that was demonstrated by the testimony was that persons with effeminate characteristics may have frequented the premises, and that this in itself does not constitute grounds for license suspension.

The initial hearing covered charges directed to activity upon the licensed premises in October and November of 1959. Investigator R., an agent for the New Jersey Division of Alcoholic Beverage Control, testified that he visited Murphy's Tavern on all three of the dates mentioned in the charge. He described the premises as consisting of one small barroom, about 20 x 25 feet in size. On his October 24 visit, he noted about 40 patrons in the place, seated at the bar and milling around. Approximately 20 of the customers attracted his attention because of "their feminine actions and mannerisms, the manner in which they conducted themselves." More specifically, "\* \* \* they would speak to the male seated with them, they would roll their eyes at each other and simulate a kiss now and then, like you would peck a kiss at a person, and occasionally they would put their arm around each other and feel different parts of the body \* \* \*." He added, "We could definitely smell the odor or perfume on the premises."

On his second visit, on October 30, agent R. again singled out about 15 to 20 of the 40 to 45 males on the premises as displaying marked feminine characteristics. On one occasion he observed one male to say to another, "I thought you were going home with me tonight," and they would grab each other's private parts and simulate kissing each other." Agent R. also witnessed an argument between two male patrons in which obscenities were freely exchanged; he testified that the bartender did not move to halt the dispute. On November 8, the same agent again visited the premises, which were filled to capacity with about 75 to 80 males and one couple. He observed about 20 to 25 of the males "grabbing each other as they would pass going to the men's room \* \* \* they would grab each other's buttocks or each other's private parts \* \* \* they acted as though they were like a man and wife would act. They helped each other drinking and put their arms around one another, and we observed two directly opposite us that had eyebrow pencil on." Later that evening, agent R. had a conversation with bartender Joseph Yeachshino; the investigator, still unrevealed, said, "The kids must have really been dressed up for Halloween," and Yeachshino replied, "if you were new in town and came in here for the first time that night, you would have had a ball with all the [obscenity] in here."

At about 1:50 a.m., as bartender Carmine Lubertazzi began to extinguish the lights in the tavern and as "three of these apparent homosexuals passed him [on their way out] they grabbed him by his private parts, at which time he pulled away \* \* \* laughing and joking with them \* \* \* on one occasion one of the apparent homosexuals kissed Mr. Lubertazzi on the cheek as he left." Several minutes later, agent R. and agent S., who was with him, identified themselves to the bartenders. Lubertazzi was asked whether it was normal for patrons to grab him by his private parts as they left the premises, and he allegedly replied, "That's nothing \* \* \* you could see that in any straight bar too." Agent S. asked Lubertazzi if he would kiss him, the agent, also, and the bartender replied, "Sure, if you were my cousin."

Direct examination of agent S. was waived upon the stipulation that he had accompanied agent R. on the three dates mentioned and that his testimony would be entirely corroborative. On cross-examination, he was asked what made him think any of the patrons were

homosexuals; he replied, "When you see a man put his arm around another man and rest his head on his shoulder, and another man while he's doing that is rotating his hand on a man's buttocks or grabbing each other by the private parts or kissing each other on the lips or cheeks, is to me apparent homosexuals."

The testimony on behalf of appellant at this initial hearing included that of William R. Peters, a patron of the tavern, who testified that while some of the customers "have fairly high voices," none of them ever annoyed or bothered him and he did not perceive any homosexuals; Lubertazzi, who admitted that persons with feminine characteristics frequented the tavern, said that there were no patrons whom he considered homosexuals, denied that a patron had kissed him on the cheek upon leaving ("\* \* \* I remember this fellow leaning over and saying to me good night, I had a nice time \* \* \* it sort of probably could have looked like a kiss on the cheek, but it wasn't"), and disputed the substance of the alleged conversations with the agents; part-time bartender Theodore Hirsch, who testified that he worked on November 7 and 8, that there were no homosexuals present, and that he did not see anything obscene or improper but that if he saw one male put his hand around another male at the bar he "would tell them to cut it out;" Yeachshino, who conceded that some of the patrons had feminine characteristics but denied that any of them, to his knowledge, were homosexuals, explained possible touching of each other by the patrons on November 8 in terms of the crowded conditions in the tavern ("there was no other way you could have gotten around unless you touched somebody one way or another"), disputed the substance of the "Halloween" verbal exchange with agent R., and maintained that he did not know what the expression, "fag or fairy," meant; Jack Trachtenberg, one of the owners and the manager of the tavern, who stated that there were customers with effeminate characteristics who usually congregated by themselves but that they never bothered other patrons, that the Newark police had the establishment under surveillance for several months in the summer of 1959 but failed to point out to him any people they considered undesirable, and that he did not take any steps to determine whether the effeminate patrons were in fact homosexuals because "the only way \* \* \* is to be approached by one or to actually see them do something," which did not occur in his experience and observation; and Al Thoma, an athletic director at the Newark Athletic Club, who testified that, in his opinion, it is not possible to tell from a person's mannerisms whether he is a homosexual.

At the second hearing, relating to charges focused on May 6, 13 and 14, 1960, three of the respondent's investigators and an administrative inspector testified as to their observations, which were quite similar to those of agents R. and S. on the prior occasions.

Agent D. noted that after he had sat down at the bar on May 6, a male patron named Jimmy (later identified as James Geddings, Jr.) brushed by him, said, "Excuse me," introduced himself and started a conversation. According to the investigator, "through the course of the conversation he was rubbing his left leg against my right leg, and from time to time he placed his hand on my leg. When I was about to leave, he grabbed me in my privates and asked if I was going to return." When agent D. did return to the premises, on May 13, he again encountered Geddings, who once more rubbed the agent's leg and grabbed his privates while attempting to convince him to engage in a sex orgy. The agent was at that time introduced to another male patron named Fred, who openly admired his physique, and, when rebuffed once on a "proposition" to the agent, said, "That is too bad because I could do a lot with that body of yours." Agent D. testified that he mentioned to one of the bartenders, Bruce Adams, that he and Geddings were going to have a sex orgy and asked if Bruce would like to come along; Adams purportedly answered, "No, only with you," and rolled his eyes. Agent D. left

the tavern at midnight with Geddings, and they were met outside by the other agents, who identified themselves and brought Geddings into the back room of the tavern for questioning.

The testimony of agent S. was largely repetitive of that of agent D. He observed many of the male patrons calling each other such names as "Honey," "Doll," "Mary," and "Mother." At one point, as he moved down a crowded aisle to the men's room, agent S. accidentally brushed against one of the male patrons, who looked up at him and said, "Oo, no wonder I always sit here. I get to feel all these warm bodies." He also overheard a conversation in which one male said to the other, "Well, I don't go out with him any more. We are incompatible \* \* \* It is better this way. Besides, Artie is so much younger." Agent S. also observed, on May 13, "two males standing very close to each other, facing each other, place their arms about each other in embrace, and moving the lower parts of their bodies in circular motion in time to the music on the juke box."

Agent N. testified that he observed agent D. with Geddings, and he confirmed Geddings' physical advances. He recalled that a patron seated next to him had mentioned, nodding in the direction of agent D., "I wish I could get an introduction to him. He has such a body. There should be a law against that." Administrative inspector D. confirmed the general observations of the other agents.

Appellant produced Jack Schultz, manager of the tavern on the nights in question, Lubertazzi, and Geddings. Schultz and Lubertazzi merely denied that homosexuals congregated in the tavern, to their knowledge, and insisted that they could not evict a patron from the premises simply because of the way he dressed or the manner in which he spoke. Geddings recalled sitting and talking with agent D. but denied that the subject of homosexual relations ever came up or that he had touched the agent's private parts. He emphatically proclaimed that he was not a homosexual. He admitted that he and agent D. had left the tavern about the same time on the evening of May 13, but he asserted that they were not together and that he was just going on to another bar for a drink.

Our review of the proceedings before the Division is to determine whether there is substantial competent primary evidence to support the inferences of violation drawn by the administrative tribunal. In re Larsen, 17 N.J. Super. 564, 573 (App. Div. 1952); Benedetti v. Bd. of Com'rs. of Trenton, 35 N.J. Super. 30, 34 (App. Div. 1955); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504 (App. Div. 1956). Therefore, to the extent that appellant asks us to reject the testimony of the respondent's agents in the light of the absolute denials of its own witnesses, we must, having found the agents' testimony reasonably credible, reject its contention. As stated in Freud v. Davis, 64 N.J. Super. 242, 246-47 (App. Div. 1960),

"The choice of accepting or rejecting the testimony of witnesses rests with the administrative agency, and where such choice is reasonably made, it is conclusive on appeal. We canvass the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it."

It is further urged that there was no direct proof of the homosexual nature of those patronizing appellant's premises. and, alternatively, that even if there was sufficient proof, the mere presence of persons with abnormal physical or emotional tendencies



does not, without more, require their exclusion from the premises.

In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these characteristics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405 (App. Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Secondly, aside from the question of actual homosexuality, the proofs herein are, considering our reviewing function, highly persuasive as to the overt acts of lewdness practiced upon the premises. The testimony of the agents with respect to the physical touching of private parts, the simulated kissing, and the suggestiveness of many of the conversations cannot be overlooked in this regard. And the recital of agent D. with respect to his encounter with Geddings, though denied by the latter, could reasonably be believed by the hearing officer and the Director. Agent D.'s direct testimony that he was "propositioned," along with the reports of other conversations overheard by the investigators, provides ample support for the finding of guilt on the charge of soliciting.

It should not be thought that the court is callous to the problem of the homosexual, medically or socially. The public interest in tight control over the liquor business, In re Olympic, Inc., 49 N.J. Super. 299, 306 (App. Div.), certif. denied 27 N.J. 279 (1958), involves, however, neither the curative approach of the physician nor the analytical view of the sociologist. The primary concern in this regard is maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded.

Affirmed.

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